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SENATE BILL NO. 301

Offered January 9, 2008

Prefiled January 8, 2008

A *BILL to amend and reenact §§ 54.1-2105.1, 55-79.41, 55-79.58, 55-79.58:1, 55-79.74, 55-79.79, 55-79.81, 55-79.84:1, 55-79.86, 55-79.89, 55-79.93:1, 55-79.95, 55-79.97, 55-79.98, 55-362, 55-362.1, 55-374.1, 55-374.2, 55-375, 55-392.1, 55-484, 55-487, 55-496, 55-504.1, 55-511, 55-512, 55-514.2, 55-516.1, 55-528, 55-529, and 55-530 of the Code of Virginia and to amend the Code of Virginia by adding in Title 54.1 a chapter numbered 23.3, consisting of sections numbered 54.1-2345 through 54.1-2355, and by adding in Chapter 29 of Title 55 a section numbered 55-530.1, relating to common interest communities.*

Patron—Whipple

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2105.1, 55-79.41, 55-79.58, 55-79.58:1, 55-79.74, 55-79.79, 55-79.81, 55-79.84:1, 55-79.86, 55-79.89, 55-79.93:1, 55-79.95, 55-79.97, 55-79.98, 55-362, 55-362.1, 55-374.1, 55-374.2, 55-375, 55-392.1, 55-484, 55-487, 55-496, 55-504.1, 55-511, 55-512, 55-514.2, 55-516.1, 55-528, 55-529, and 55-530 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 54.1 a chapter numbered 23.3, consisting of sections numbered 54.1-2345 through 54.1-2355, and by adding in Chapter 29 of Title 55 a section numbered 55-530.1 as follows:

§ 54.1-2105.1. Other powers and duties of the Real Estate Board.

In addition to the provisions of §§ 54.1-2105.01 through 54.1-2105.04, the Board shall:

1. Administer the provisions of Chapter 29 (§ 55-528 et seq.) of Title 55;

2. Develop and disseminate an association annual report form for use in accordance with §§ 55-79.93:1, 55-504.1, and 55-516.1;

3. Develop ~~develop~~ a residential property disclosure statement form for use in accordance with the provisions of Chapter 27 (§ 55-517 et seq.) of Title 55; and

4. Develop and disseminate a one-page form to accompany association disclosure packets required pursuant to § 55-512, which form shall summarize the unique characteristics of property owners' associations generally and shall make known to prospective purchasers the unusual and material circumstances affecting a lot owner in a property owners' association, including, but not limited to, the obligation of a lot owner to pay regular annual or special assessments to the association, and the penalty for failure or refusal to pay such assessments; the purposes for which such assessments may be used; and the importance the declaration of restrictive covenants and other governing documents play in association living.

§ 54.1-2345. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Association" has the same meaning specified in § 55-528.

"Board" means the Common Interest Community Board.

"Common interest community" has the same meaning specified in § 55-528; provided that for the purposes of this chapter only, a common interest community shall not include any time-share project registered pursuant to the Virginia Real Estate Time-Share Act nor any additional land which is a part thereof.

"Common interest community manager" means a person or business entity, including, but not limited to, a partnership, association, corporation, or limited liability company, who, for compensation or valuable consideration, provides management services to a common interest community.

"Declaration" has the same meaning specified in § 55-528.

"Governing board" shall mean the governing board of an association, including the executive organ of a condominium unit owners' association, the executive board of a cooperative proprietary lessees' association, and the board of directors of a property owners' association.

"Lot" has the same meaning specified in § 55-528.

"Management services" means (i) acting with the authority of an association in its business, legal, financial, or other transactions with association members and nonmembers; (ii) executing the resolutions and decisions of an association or, with the authority of the association, enforcing the rights of the association secured by statute, contract, covenant, rule, or bylaw; (iii) collecting, disbursing, or otherwise exercising dominion or control over money or other property belonging to an association; (iv)

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59 preparing budgets, financial statements, or other financial reports for an association; (v) arranging,
60 conducting, or coordinating meetings of an association or the governing body of an association; (vi)
61 negotiating contracts or otherwise coordinating or arranging for services or the purchase of property
62 and goods for or on behalf of an association; or (vii) offering or soliciting to perform any of the
63 aforesaid acts or services on behalf of an association.

64 § 54.1-2346. License required; certification of employees.

65 A. Unless exempted by § 54.1-2347, any person, partnership, corporation, or other entity offering
66 management services to a common interest community on or after October 1, 2008, shall hold a valid
67 license issued in accordance with the provisions of this chapter prior to engaging in such management
68 services.

69 B. Unless exempted by § 54.1-2347, any person, partnership, corporation, or other entity offering
70 management services to a common interest community without being licensed in accordance with the
71 provisions of this chapter, shall be subject to the provisions of § 54.1-111.

72 C. On or after July 1, 2011, it shall be a condition of the issuance or renewal of the license of a
73 common interest community manager that all employees of the common interest community manager
74 who have direct contact with the governing board of the association in the provision of management
75 services to a common interest community shall, within two years after employment with the common
76 interest community manager, hold a certificate issued by the Board certifying the person possesses the
77 character and minimum skills to engage properly in the provision of management services to a common
78 interest community or shall be under the direct supervision of a certified employee of such common
79 interest community manager. A common interest community manager shall notify the Board upon any
80 termination of a certificated employee for cause.

81 D. It shall be a condition of the issuance or renewal of the license of a common interest community
82 manager that the common interest community manager shall obtain and maintain a blanket fidelity bond
83 or employee dishonesty insurance policy insuring the common interest community manager against
84 losses resulting from theft or dishonesty committed by the officers, directors, and persons employed by
85 the common interest community manager. Such bond or insurance policy shall include coverage for
86 losses of clients of the common interest community manager resulting from theft or dishonesty committed
87 by the officers, directors, and persons employed by the common interest community manager. Such
88 bond or insurance policy shall provide coverage in an amount equal to the lesser of \$2 million or the
89 highest aggregate amount of the operating and reserve balances of all associations under the control of
90 the common interest community manager during the prior fiscal year. The minimum coverage amount
91 shall be \$10,000.

92 E. It shall be a condition of the issuance or renewal of the license of a common interest community
93 manager that the common interest community manager certifies to the Board (i) that the common
94 interest community manager is in good standing and authorized to transact business in Virginia; (ii)
95 that the common interest community manager has established a code of conduct for the officers,
96 directors, and persons employed by the common interest community manager to protect against conflicts
97 of interest; (iii) that the common interest community manager provides all management services pursuant
98 to written contracts with the associations to which such services are provided; (iv) that the common
99 interest community manager has established a system of internal accounting controls to manage the risk
100 of fraud or illegal acts; and (v) that an independent certified public accountant reviews or audits the
101 financial statements of the common interest community manager at least annually in accordance with
102 standards established by the American Institute of Certified Public Accountants or by any successor
103 standard-setting authorities.

104 F. The Board shall issue a provisional license to any person, partnership, corporation, or other
105 entity offering management services to a common interest community on or before December 31, 2008,
106 who makes application for licensure prior to January 1, 2009. Such provisional license will expire on
107 June 30, 2011, and may not be renewed. This subsection shall not be construed to limit the powers and
108 authority of the Board.

109 § 54.1-2347. Exceptions and exemptions generally.

110 A. The provisions of this chapter shall not be construed to prevent or prohibit:

111 1. An employee of a duly licensed common interest community manager from providing management
112 services under the supervision of a duly licensed common interest community manager;

113 2. An employee of an association from providing management services for that association's common
114 interest community;

115 3. A resident of a common interest community acting without compensation from providing
116 management services for that common interest community;

117 4. A member of the governing board of an association acting without compensation from providing
118 management services for that association's common interest community;

119 5. A person acting as a receiver or trustee in bankruptcy in the performance of his duties as such,
120 or any person acting under order of any court from providing management services for a common

interest community;

6. A duly licensed attorney-at-law from representing an association or a common interest community manager in any business that constitutes the practice of law;

7. A duly licensed certified public accountant from providing bookkeeping or accounting services to an association or a common interest community manager;

8. A duly licensed real estate broker or agent from selling, leasing, renting, or managing lots within a common interest community; or

9. An association, exchange agent, exchange company, managing agent, or managing entity of a time-share project registered pursuant to the Virginia Real Estate Time-Share Act from providing management services for such time-share project.

B. A licensee of the Board shall comply with the Board's regulations, notwithstanding the fact that the licensee would be otherwise exempt from licensure under subsection A. Nothing in this subsection shall be construed to require a person to be licensed in accordance with this chapter if he would be otherwise exempt from such licensure.

§ 54.1-2348. Common Interest Community Board; membership; meetings; quorum.

The Common Interest Community Board shall be appointed by the Governor and composed of nine members as follows: three shall be representatives of Virginia common interest community managers, one shall be a Virginia attorney whose practice includes the representation of associations, one shall be a representative of a Virginia certified public accountant whose practice includes providing attest services to associations, one shall be a representative of the Virginia time-share industry, and three shall be Virginia citizens, one of whom serves or who has served on the governing board of an association or who resides or has resided in a common interest community. Of the initial appointments, one representative of Virginia common interest community managers shall serve a term of two years and one representative of Virginia common interest community managers shall serve a term of three years; the Virginia attorney shall serve a term of three years; the Virginia certified public accountant shall serve a term of one year; the Virginia citizen who serves or who has served on the governing board of an association or who resides or has resided in a common interest community shall serve a term of two years, and the other Virginia citizens shall serve terms of one year. All other initial appointments and all subsequent appointments shall be for terms for four years, except that vacancies may be filled for the remainder of the unexpired term. Each appointment of a representative of a Virginia common interest community manager to the Board may be made from nominations submitted by the Virginia Association of Community Managers, who may nominate no more than three persons for each manager vacancy. In no case shall the Governor be bound to make any appointment from such nominees. No person shall be eligible to serve for more than two successive four-year terms.

The Board shall meet at least four times each year and other such times as it deems necessary. The Board shall elect from its membership a chairman and a vice-chairman to serve for a period of one year. Four members of the Board shall constitute a quorum. The Board is vested with the powers and duties necessary to execute the purposes of this chapter.

§ 54.1-2349. Powers and duties of the Board.

A. The Board shall administer and enforce this chapter. In addition to the provisions of § 54.1-201, the Board shall:

1. Promulgate regulations necessary to carry out the requirements of this chapter in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) to include but not be limited to the prescription of fees, procedures, and qualifications for the issuance and renewal of common interest community manager licenses. The Board shall annually assess each common interest community manager an amount equal to the lesser of \$1,000 (or such other amount as the Board may establish by regulation) or 0.02% of its gross receipts from common interest community management during the preceding calendar. Following the close of any biennium, nongeneral fund revenues generated by such fees in the past biennium in excess of the expenses allocated to the Board in its account within the Department of Professional and Occupational Regulation in such biennium shall be remitted to the State Treasurer and shall be placed to the credit of the Common Interest Community Management Information Fund established pursuant to § 55-529;

2. Establish criteria for the licensure of common interest community managers to ensure the appropriate training and educational credentials for the provision of management services to common interest communities. Such criteria may include experiential requirements and shall include designation as an Accredited Association Management Company by the Community Association Institute. As an additional alternative to such designation, the Board shall have authority, by regulation, to include one of the following: (i) successful completion of another Board-approved training program and certifying examination, or (ii) successful completion of a Virginia testing program to determine the quality of the training and educational credentials for and competence of common interest community managers;

3. Establish criteria for the certification of the employees of common interest community managers

182 who participate directly in the provision of management services to a common interest community to
183 ensure the person possesses the character and minimum skills to engage properly in the provision of
184 management services to a common interest community. Such criteria shall include designation as a
185 Certified Manager of Community Associations by the National Board for Certification of Community
186 Association Managers, designation as an Association Management Specialist by the Community
187 Association Institute, or designation as a Professional Community Association Manager by the
188 Community Association Institute. As an additional alternative to such designations, the Board shall have
189 authority, by regulation, to include one of the following: (i) successful completion of another
190 Board-approved training program and certifying examination, or (ii) successful completion of a Virginia
191 testing program to determine the quality of the training and educational credentials for and competence
192 of the employees of common interest community managers who participate directly in the provision of
193 management services to a common interest community. The fee paid to the Board for the issuance of
194 such certificate shall be paid to the Common Interest Community Management Information Fund;

195 4. Approve the criteria for accredited common interest community manager training programs;

196 5. Approve accredited common interest community manager training programs;

197 6. Establish, by regulation, standards of conduct for common interest community managers and for
198 employees of common interest community managers certified in accordance with the provisions of this
199 chapter; and

200 7. Establish, by regulation, an education-based certification program for persons who are involved in
201 the business or activity of providing management services to common interest communities. The Board
202 shall have the authority to approve training courses and instructors in furtherance of the provisions of
203 this chapter.

204 B. The Board shall be responsible for the administration and enforcement of this chapter; provided
205 that the Real Estate Board shall have the sole responsibility for the enforcement of this chapter with
206 respect to a real estate broker, real estate salesperson, or real estate brokerage firm licensed in
207 accordance with Chapter 21 (§ 54.1-2100 et seq.) who is also licensed as a common interest community
208 manager.

209 C. The Board is authorized to obtain criminal history record information from any state or federal
210 law-enforcement agency relating to an applicant for licensure or certification. Any information so
211 obtained is for the exclusive use of the Board and shall not be released to any other person or agency
212 except in furtherance of the investigation of the applicant or with the authorization of the applicant or
213 upon court order.

214 § 54.1-2350. Annual Report and Disclosure Packets.

215 In addition to the provisions of § 54.1-2349, the Board shall:

216 1. Administer the provisions of Chapter 29 (§ 55-528 et seq.) of Title 55;

217 2. Develop and disseminate an association annual report form for use in accordance with
218 §§ 55-79.93:1, 55-504.1, and 55-516.1;

219 3. Develop and disseminate a one-page form to accompany association disclosure packets required
220 pursuant to § 55-512, which form shall summarize the unique characteristics of property owners'
221 associations generally and shall make known to prospective purchasers the unusual and material
222 circumstances affecting a lot owner in a property owners' association, including, but not limited to, the
223 obligation of a lot owner to pay regular annual or special assessments to the association, and the
224 penalty for failure or refusal to pay such assessments; the purposes for which such assessments may be
225 used; and the importance the declaration of restrictive covenants and other governing documents play in
226 association living.

227 § 54.1-2351. General powers and duties of Board concerning associations.

228 A. The board may adopt, amend, and repeal rules and regulations and issue orders consistent with
229 and in furtherance of the objectives of this chapter, but the board may not intervene in the internal
230 activities of an association except to the extent necessary to prevent or cure violations of this chapter or
231 of the chapter pursuant to which the association is created. The board may prescribe forms and
232 procedures for submitting information to the board.

233 B. If it appears that any person has engaged, is engaging or is about to engage in any act or
234 practice in violation of this chapter, Chapters 4.2, 21, 24, or 26 of Title 55, or any of the board's
235 regulations or orders, the board without prior administrative proceedings may bring suit in the
236 appropriate court to enjoin that act or practice or for other appropriate relief. The board is not
237 required to post a bond or prove that no adequate remedy at law exists.

238 C. The board may intervene in any action or suit involving the powers or responsibilities of a
239 declarant or the governing board of an association in connection with any association which is required
240 to file an annual report with the board.

241 D. The board may accept grants-in-aid from any governmental source and may contract with
242 agencies charged with similar functions in this or other jurisdictions in furtherance of the objectives of
243 this chapter.

E. The board may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices, and may develop information that may be useful in the discharge of the board's duties.

F. In issuing any cease and desist order or order rejecting or revoking registration of an association, the board shall state the basis for the adverse determination and the underlying facts.

G. Without limiting the remedies which may be obtained under this chapter, the board, without compliance with the Administrative Process Act (§ 2.2-4000 et seq.), shall have the authority to enforce the provisions of this section and may institute proceedings in equity to enjoin any person, partnership, corporation, or any other entity from engaging in any unlawful act enumerated in this section. Such proceedings shall be brought in the name of the Commonwealth by the board in the circuit court or general district court of the city or county in which the unlawful act occurred or in which the defendant resides.

H. The board may assess a civil penalty to be paid to the Common Interest Community Information Fund of not more than \$1,000 per violation against any person who violates any provision of this section. In determining the amount of the penalty, the board shall consider the degree and extent of harm caused by the violation. No civil penalty may be assessed under this section unless the person has been given the opportunity for a hearing pursuant to the Administrative Process Act, (§ 2.2-4000 et seq.). The penalty may be sued for and recovered in the name of the Commonwealth.

§ 54.1-2352. Investigative powers of Board.

A. The Board may initiate public or private investigations within or outside the Commonwealth to determine whether any representation in any document or information filed with the board is false or misleading or whether any person has engaged, is engaging, or is about to engage in any unlawful act or practice.

B. In the course of any investigation or hearing, the board may subpoena witnesses and documents, administer oaths and affirmations, and adduce evidence. If a person fails to comply with a subpoena or to answer questions propounded during the investigation or hearing, the board may apply to the appropriate court for a contempt order or injunctive or other appropriate relief to secure compliance.

§ 54.1-2353. Cease and desist orders.

A. If the Board determines after notice and hearing that the governing board of an association has:

1. violated any statute or regulation governing the association regulated pursuant to this chapter, including engaging in any act or practice in violation of this chapter, Chapters 4.2, 21, 24, or 26 of Title 55, or any of the board's regulations or orders;

2. failed to register as an association or to file an annual report as required by statute or regulation;

3. materially misrepresented facts in an application for registration or an annual report; or

4. willfully refused to furnish the board information or records required or requested pursuant to statute or regulation;

it may issue an order requiring the governing board of the association to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the agency will carry out the purposes of this chapter.

B. If the Board makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the Board shall give notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether or not it becomes permanent.

§ 54.1-2354. Protection of the interests of associations; appointment of receiver for common interest community manager.

A. A common interest community manager owes a fiduciary duty to the associations to which it provides management services with respect to the manager's handling the funds or the records of each association. All funds deposited with the common interest community manager shall be handled in a fiduciary capacity and shall be kept in a separate fiduciary trust account or accounts in an FDIC-insured financial institution separate from the assets of the common interest community manager. The funds shall be the property of the association and shall be segregated for each depository in the records of the common interest community manager in a manner that permits the funds to be identified on an association basis. All records having administrative or fiscal value to the association that a common interest community manager holds, maintains, compiles, or generates on behalf of a common interest community are the property of the association. A common interest community manager may retain and dispose of association records in accordance with a policy contained in the contract between the common interest community manager and the association. Within a reasonable time after a written

305 request for any such records, the common interest community manager shall provide copies of the
306 requested records to the association at the association's expense. The common interest community
307 manager shall return all association records that it retains and any originals of legal instruments or
308 official documents which are in the possession of the common interest community manager to the
309 association within a reasonable time after termination of the contract for management services without
310 additional cost to the association. Records maintained in electronic format may be returned in such
311 format.

312 B. If the Board has reasonable cause to believe that a common interest community manager is
313 unable to properly discharge its fiduciary responsibilities to an association to which it provides
314 management services, the Board may submit an ex parte petition to the circuit court of the city or
315 county wherein the common interest community manager maintains an office or is doing business for the
316 issuance of an order authorizing the immediate inspection by and production to representatives of the
317 petitioner of any records, documents, and physical or other evidence belonging to the subject common
318 interest community manager. The court may issue such order without notice to the common interest
319 community manager if the petition, supported by affidavit of the petitioner and such other evidence as
320 the court may require, shows reasonable cause to believe that such action is required to prevent
321 immediate loss of property of one or more of the associations to which the subject common interest
322 community manager provides management services. The court may also temporarily enjoin further
323 activity by the common interest community manager and take such further action as shall be necessary
324 to conserve, protect, and disburse the funds involved, including the appointment of a receiver. The
325 papers filed with the court pursuant to this subsection shall be placed under seal.

326 C. If the Board has reasonable cause to believe that a common interest community manager is
327 unable to properly discharge its fiduciary responsibilities to an association to which it provides
328 management services, the Board may file a petition with the circuit court of the county or city wherein
329 the subject common interest community manager maintains an office or is doing business. The petition
330 may seek the following relief: (i) an injunction prohibiting the withdrawal of any bank deposits or the
331 disposition of any other assets belonging to or subject to the control of the subject common interest
332 community manager; and (ii) the appointment of a receiver for all or part of the funds or property of
333 the subject common interest community manager. The subject common interest community manager shall
334 be given notice of the time and place of the hearing on the petition and an opportunity to offer
335 evidence. The court, in its discretion, may require a receiver appointed pursuant to this section to post
336 bond, with or without surety. The papers filed with the court under this subsection shall be placed under
337 seal until such time as the court grants an injunction or appoints a receiver. The court may issue an
338 injunction, appoint a receiver, or provide such other relief as the court may consider proper if, after a
339 hearing, the court finds that such relief is necessary or appropriate to prevent loss of property of one or
340 more of the associations to which the subject common interest community manager provides
341 management services.

342 D. In any proceeding under subsection C, any person or entity known to the Board to be indebted to
343 or having in his possession property, real or personal, belonging to or subject to the control of the
344 subject common interest community manager's business and which property the Board reasonably
345 believes may become part of the receivership assets, shall be served with a copy of the petition and
346 notice of the time and place of the hearing.

347 E. The court shall describe the powers and duties of the receiver in its appointing order, which may
348 be amended from time to time. The receiver shall, unless otherwise ordered by the court in the
349 appointing order, (i) prepare and file with the Board a list of all associations managed by the subject
350 common interest community manager; (ii) notify in writing all of the associations to which the subject
351 common interest community manager provides management services of the appointment, and take
352 whatever action the receiver deems appropriate to protect the interests of the associations until such
353 time as the associations have had an opportunity to obtain a successor common interest community
354 manager; (iii) facilitate the transfer of records and information to such successor common interest
355 community managers; (iv) identify and take control of all bank accounts, including without limitation
356 trust and operating accounts, over which the subject common interest community manager had signatory
357 authority in connection with its management business; (v) prepare and submit an accounting of receipts
358 and disbursements and account balances of all funds under the receiver's control for submission to the
359 court within four months of the appointment and annually thereafter until the receivership is terminated
360 by the court; (vi) attempt to collect any accounts receivable related to the subject common interest
361 community manager's business; (vii) identify and attempt to recover any assets wrongfully diverted from
362 the subject common interest community manager's business, or assets acquired with funds wrongfully
363 diverted from the subject common interest community manager's business; (viii) terminate the subject
364 common interest community manager's business; (ix) reduce to cash all of the assets of the subject
365 common interest community manager; (x) determine the nature and amount of all claims of creditors of
366 the subject common interest community manager, including associations to which the subject common

interest community manager provided management services; and (xi) prepare and file with the court a report of such assets and claims proposing a plan for the distribution of funds in the receivership to such creditors in accordance with the provisions of subsection F.

F. Upon the court's approval of the receiver's report referenced in subsection E, at a hearing after such notice as the court may require to creditors, the receiver shall distribute the assets of the common interest community manager and funds in the receivership first to clients whose funds were or ought to have been held in a fiduciary capacity by the subject common interest community manager, then to the receiver for fees, costs, and expenses awarded pursuant to subsection G, and thereafter to the creditors of the subject common interest community manager, and then to the subject common interest community manager or its successors in interest.

G. A receiver appointed pursuant to this section shall be entitled, upon proper application to the court in which the appointment was made, to recover an award of reasonable fees, costs, and expenses. If there are not sufficient nonfiduciary funds to pay the award, then the shortfall shall be paid by the Common Interest Community Management Information Fund as a cost of administering the Fund pursuant to § 55-530, to the extent that the said Fund has funds available. The Fund shall have a claim against the subject common interest community manager for the amount paid.

H. The court may determine whether any assets under the receiver's control should be returned to the subject common interest community manager.

I. If the Board shall find that any common interest community manager is insolvent, that its merger into another common interest community manager is desirable for the protection of the associations to which such common interest community manager provides management services and that an emergency exists, and, if the board of directors of such insolvent common interest community manager shall approve a plan of merger of such common interest community manager into another common interest community manager, compliance with the requirements of § 13.1-718 shall be dispensed with as to such insolvent common interest community manager and the approval by the Board of such plan of merger shall be the equivalent of approval by the holders of more than two-thirds of the outstanding shares of such insolvent common interest community manager for all purposes of Article 12 (§ 13.1-715.1 et seq.) of Chapter 9 of Title 13.1. If the Board finds that a common interest community manager is insolvent, that the acquisition of its assets by another common interest community manager is in the best interests of the associations to which such common interest community manager provides management services and that an emergency exists, it may, with the consent of the boards of directors of both common interest community managers as to the terms and conditions of such transfer, including the assumption of all or certain liabilities, enter an order transferring some or all of the assets of such insolvent common interest community manager to such other common interest community manager and no compliance with the provisions of §§ 13.1-723 and 13.1-724 shall be required, nor shall §§ 13.1-730 through 13.1-741 be applicable to such transfer. In the case either of such a merger or of such a sale of assets, the Board shall provide that prompt notice of its finding of insolvency and of the merger or sale of assets be sent to the stockholders of record of the insolvent common interest community manager for the purpose of providing such shareholders an opportunity to challenge the finding that the bank is insolvent. The relevant books and records of such insolvent common interest community manager shall remain intact and be made available to such shareholders for a period of 30 days after such notice is sent. The Board's finding of insolvency shall become final if a hearing before the Board is not requested by any such shareholder within such 30-day period. If, after such hearing, the Board finds that such common interest community manager was solvent, it shall rescind its order entered pursuant to this subsection and the merger or transfer of assets shall be rescinded. But if, after such hearing, the Board finds that such common interest community manager was insolvent, its order shall be final.

J. This statute is declared to be remedial. Its purpose is to protect the interests of associations adversely affected by common interest community managers who have breached their fiduciary duty. It is to be liberally administered in order to protect those interests and thereby the public's interest in the quality of management services provided by Virginia common interest community managers.

§ 54.1-2355. Variation by Agreement.

Except as expressly provided in this chapter, provisions of this chapter may not be varied by agreement, and rights conferred by this chapter may not be waived. All management agreements entered into by common interest community managers must comply with the terms of this chapter and the provisions of Chapters 4.2, 24, or 26 of Title 55, as applicable.

§ 55-79.41. Definitions.

When used in this chapter:

"Capital components" means those items, whether or not a part of the common elements, for which the unit owners' association has the obligation for repair, replacement or restoration and for which the executive organ determines funding is necessary.

"Common elements" means all portions of the condominium other than the units.

428 "Common expenses" means all expenditures lawfully made or incurred by or on behalf of the unit
429 owners' association, together with all funds lawfully assessed for the creation and/or maintenance of
430 reserves pursuant to the provisions of the condominium instruments.

431 "Condominium" means real property, and any incidents thereto or interests therein, lawfully
432 submitted to this chapter by the recordation of condominium instruments pursuant to the provisions of
433 this chapter. No project shall be deemed a condominium within the meaning of this chapter unless the
434 undivided interests in the common elements are vested in the unit owners.

435 "Condominium instruments" is a collective term referring to the declaration, bylaws, and plats and
436 plans, recorded pursuant to the provisions of this chapter. Any exhibit, schedule, or certification
437 accompanying a condominium instrument and recorded simultaneously therewith shall be deemed an
438 integral part of that condominium instrument. Any amendment or certification of any condominium
439 instrument shall, from the time of the recordation of such amendment or certification, be deemed an
440 integral part of the affected condominium instrument, so long as such amendment or certification was
441 made in accordance with the provisions of this chapter.

442 "Condominium unit" means a unit together with the undivided interest in the common elements
443 appertaining to that unit. (Cf. the definition of "unit," *infra*.)

444 "Contractable condominium" means a condominium from which one or more portions of the
445 submitted land may be withdrawn in accordance with the provisions of the declaration and of this
446 chapter. If such withdrawal can occur only by the expiration or termination of one or more leases, then
447 the condominium shall not be deemed a contractable condominium within the meaning of this chapter.

448 "Conversion condominium" means a condominium containing structures which before the recording
449 of the declaration, were wholly or partially occupied by persons other than those who have contracted
450 for the purchase of condominium units and those who occupy with the consent of such purchasers.

451 "Convertible land" means a building site; that is to say, a portion of the common elements, within
452 which additional units and/or limited common elements may be created in accordance with the
453 provisions of this chapter.

454 "Convertible space" means a portion of a structure within the condominium, which portion may be
455 converted into one or more units and/or common elements, including but not limited to limited common
456 elements in accordance with the provisions of this chapter. (Cf. the definition of "unit," *infra*.)

457 "Declarant" means any person, or group of persons acting in concert, that (i) offers to dispose of his
458 or its interest in a condominium unit not previously disposed of, including an institutional lender which
459 may not have succeeded to or accepted any special declarant rights pursuant to § 55-79.74:3; (ii)
460 reserves or succeeds to any special declarant right; or (iii) applies for registration of the condominium.
461 However, for the purposes of clauses (i) and (iii), the term "declarant" shall not include an institutional
462 lender which acquires title by foreclosure or deed in lieu thereof unless such lender offers to dispose of
463 its interest in a condominium unit not previously disposed of to anyone not in the business of selling
464 real estate for his own account, except as otherwise provided in § 55-79.74:3. The term "declarant" shall
465 not include an individual who acquires title to a condominium unit at a foreclosure sale.

466 "Dispose" or "disposition" refers to any voluntary transfer of a legal or equitable interest in a
467 condominium unit to a purchaser, but shall not include the transfer or release of security for a debt.

468 "Electronic transmission" means any form of communication, not directly involving the physical
469 transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient
470 thereof, and that may be directly reproduced in paper form by such a recipient through an automated
471 process. Any term used in this definition that is defined in § 59.1-480 of the Uniform Electronic
472 Transactions Act shall have the meaning set forth in such section.

473 "Executive organ" means an executive and administrative entity, by whatever name denominated,
474 designated in the condominium instruments as the governing body of the unit owners' association.

475 "Expandable condominium" means a condominium to which additional land may be added in
476 accordance with the provisions of the declaration and of this chapter.

477 "Future common expenses" means common expenses for which assessments are not yet due and
478 payable.

479 "Identifying number" means one or more letters and/or numbers that identify only one unit in the
480 condominium.

481 "Institutional lender" means one or more commercial or savings banks, savings and loan associations,
482 trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or
483 business trusts including but not limited to real estate investment trusts, any other lender regularly
484 engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans
485 made by such a lender, or any combination of any of the foregoing entities.

486 "Land" is a three-dimensional concept and includes parcels with upper or lower boundaries, or both
487 upper and lower boundaries, as well as parcels extending ab solo usque ad coelum. Parcels of airspace
488 constitute land within the meaning of this chapter. Any requirement in this chapter of a legally sufficient
489 description shall be deemed to include a requirement that the upper or lower boundaries, if any, of the

parcel in question be identified with reference to established datum.

"Leasehold condominium" means a condominium in all or any portion of which each unit owner owns an estate for years in his unit, or in the land within which that unit is situated, or both, with all such leasehold interests due to expire naturally at the same time. A condominium including leased land, or an interest therein, within which no units are situated or to be situated shall not be deemed a leasehold condominium within the meaning of this chapter.

"Limited common element" means a portion of the common elements reserved for the exclusive use of those entitled to the use of one or more, but less than all, of the units.

"Meeting" or "meetings" means the formal gathering of the executive organ where the business of the unit owners' association is discussed or transacted.

"Nonbinding reservation agreement" means an agreement between the declarant and a prospective purchaser which is in no way binding on the prospective purchaser and which may be canceled without penalty at the sole discretion of the prospective purchaser by written notice, hand-delivered or sent by United States mail, return receipt requested, to the declarant or to any sales agent of the declarant at any time prior to the formation of a contract for the sale or lease of a condominium unit or an interest therein. Such agreement shall not contain any provision for waiver or any other provision in derogation of the rights of the prospective purchaser as contemplated by this subsection, nor shall any such provision be a part of any ancillary agreement.

"Offer" means any inducement, solicitation, or attempt to encourage any person or persons to acquire any legal or equitable interest in a condominium unit, except as security for a debt. Nothing shall be considered an "offer" which expressly states that the condominium has not been registered with the Real Estate Board *Common Interest Community Board* and that no unit in the condominium can or will be offered for sale until such time as the condominium has been so registered.

"Officer" means any member of the executive organ or official of the unit owners' association.

"Par value" means a number of dollars or points assigned to each unit by the declaration. Substantially identical units shall be assigned the same par value, but units located at substantially different heights above the ground, or having substantially different views, or having substantially different amenities or other characteristics that might result in differences in market value, may, but need not, be considered substantially identical within the meaning of this subsection. If par value is stated in terms of dollars, that statement shall not be deemed to reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or fair market transaction at a different figure shall affect the par value of any unit, or any undivided interest in the common elements, voting rights in the unit owners' association or liability for common expenses assigned on the basis thereof.

"Person" means a natural person, corporation, partnership, association, trust, or other entity capable of holding title to real property, or any combination thereof.

"Purchaser" means any person or persons, other than a declarant, who acquire by means of a voluntary transfer a legal or equitable interest in a condominium unit, other than (i) a leasehold interest, including renewal options, of less than 20 years or (ii) as security for a debt.

"Size" means the number of cubic feet, or the number of square feet of ground and/or floor space, within each unit as computed by reference to the plat and plans and rounded off to a whole number. Certain spaces within the units including, without limitation, attic, basement, and/or garage space may, but need not, be omitted from such calculation or partially discounted by the use of a ratio, so long as the same basis of calculation is employed for all units in the condominium, and so long as that basis is described in the declaration.

"Special declarant rights" means any right reserved for the benefit of a declarant, or of a person or group of persons that becomes a declarant, to (i) expand an expandable condominium, (ii) contract a contractable condominium, (iii) convert convertible land or convertible space or both, (iv) appoint or remove any officers of the unit owners' association or the executive organ pursuant to subsection A of § 55-79.74, (v) exercise any power or responsibility otherwise assigned by any condominium instrument or by this chapter to the unit owners' association, any officer or the executive organ, or (vi) maintain sales offices, management offices, model units and signs pursuant to § 55-79.66.

"Unit" means a portion of the condominium designed and intended for individual ownership and use. (Cf. the definition of "condominium unit," supra.) For the purposes of this chapter, a convertible space shall be treated as a unit in accordance with subsection (d) of § 55-79.62.

"Unit owner" means one or more persons who own a condominium unit, or, in the case of a leasehold condominium, whose leasehold interest or interests in the condominium extend for the entire balance of the unexpired term or terms. This term shall not include any person or persons holding an interest in a condominium unit solely as security for a debt.

§ 55-79.58. Contents of plats and plans.

A. There shall be recorded simultaneously with the declaration one or more plats of survey showing the location and dimensions of the submitted land, the location and dimensions of any convertible lands

551 within the submitted land, the location and dimensions of any existing improvements, the intended
552 location and dimensions of any contemplated improvements which are to be located on any portion of
553 the submitted land other than within the boundaries of any convertible lands, and, to the extent feasible,
554 the location and dimensions of all easements appurtenant to the submitted land or otherwise submitted to
555 this chapter as a part of the common elements. If the submitted land is not contiguous, then the plats
556 shall indicate the distances between the parcels constituting the submitted land. The plats shall label
557 every convertible land as a convertible land, and if there is more than one such land the plats shall label
558 each such land with one or more letters and/or numbers different from those designating any other
559 convertible land and different also from the identifying number of any unit. The plats shall show the
560 location and dimensions of any withdrawable lands, and shall label each such land as a withdrawable
561 land. The plats shall show the location and dimensions of any additional lands and shall label each such
562 land as an additional land. If, with respect to any portion or portions, but less than all, of the submitted
563 land, the unit owners are to own only an estate for years, the plats shall show the location and
564 dimensions of any such portions, and shall label each such portion as a leased land. If there is more
565 than one withdrawable land, or more than one leased land, the plats shall label each such land with one
566 or more letters and/or numbers different from those designating any convertible land or other
567 withdrawable or leased land, and different also from the identifying number of any unit. The plats shall
568 show all easements to which the submitted land or any portion thereof is subject, and shall show the
569 location and dimensions of all such easements to the extent feasible. The plats shall also show all
570 encroachments by or on any portion of the condominium. In the case of any improvements located or to
571 be located on any portion of the submitted land other than within the boundaries of any convertible
572 lands, the plats shall indicate which, if any, have not been begun by the use of the phrase "(NOT YET
573 BEGUN)," and which, if any, have been begun but have not been substantially completed by the use of
574 the phrase "(NOT YET COMPLETED)." In the case of any units the vertical boundaries of which lie
575 wholly or partially outside of structures for which plans pursuant to subsection B are simultaneously
576 recorded, the plats shall show the location and dimensions of such vertical boundaries to the extent that
577 they are not shown on such plans, and the units or portions thereof thus depicted shall bear their
578 identifying numbers. Each plat shall be certified in a recorded document as to its accuracy and
579 compliance with the provisions of this subsection by a licensed land surveyor, and the said surveyor
580 shall certify in such document or on the face of the plat that all units or portions thereof depicted
581 thereon pursuant to the preceding sentence of this subsection have been substantially completed. The
582 specification within this subsection of items that shall be shown on the plats shall not be construed to
583 mean that the plats shall not also show all other items customarily shown or hereafter required for land
584 title surveys.

585 B. There shall also be recorded, simultaneously with the declaration, plans of every structure which
586 contains or constitutes all or part of any unit or units, and which is located on any portion of the
587 submitted land other than within the boundaries of any convertible lands. The plans shall show the
588 location and dimensions of the vertical boundaries of each unit to the extent that such boundaries lie
589 within or coincide with the boundaries of such structures, and the units or portions thereof thus depicted
590 shall bear their identifying numbers. In addition, each convertible space thus depicted shall be labelled a
591 convertible space. The horizontal boundaries of each unit having horizontal boundaries shall be
592 identified on the plans with reference to established datum. Unless the condominium instruments
593 expressly provide otherwise, it shall be presumed that in the case of any unit not wholly contained
594 within or constituting one or more such structures, the horizontal boundaries thus identified extend, in
595 the case of each such unit, at the same elevation with regard to any part of such unit, lying outside of
596 such structures, subject to the following exception: In the case of any such unit which does not lie over
597 any other unit other than basement units, it shall be presumed that the lower horizontal boundary, if any,
598 of that unit lies at the level of the ground with regard to any part of that unit lying outside of such
599 structures. The plans shall be certified on their face or in another recorded document as to their accuracy
600 and compliance with the provisions of this subsection by a licensed architect, licensed engineer or
601 licensed land surveyor, and the said architect, engineer or land surveyor shall certify on the plans or in
602 the recorded document that all units or portions thereof depicted thereon have been substantially
603 completed.

604 C. When converting all or any portion of any convertible land, or adding additional land to an
605 expandable condominium, the declarant shall record, with regard to any structures on the land being
606 converted, or added, either plats of survey conforming to the requirements of subsection A and plans
607 conforming to the requirements of subsection B, or certifications, conforming to the certification
608 requirements of said subsections, of plats and plans previously recorded pursuant to § 55-79.59.

609 D. Notwithstanding the provisions of subsection A and B, a time-share interest in a unit which has
610 been subjected to a time-share instrument pursuant to § 55-367 may be conveyed prior to substantial
611 completion of that unit if (i) a completion bond has been filed in compliance with subsection B of
612 § 55-79.58:1 and remains in full force and effect until the unit is certified as substantially complete in

accordance with subsections A and B and (ii) the settlement agent or title insurance company insuring the time-share estate in the unit certifies to the purchaser in writing, based on information provided by the ~~Real Estate~~ *Common Interest Community* Board, that the bond has been filed with the ~~Real Estate~~ *Common Interest Community* Board.

E. When converting all or any portion of any convertible space into one or more units and/or limited common elements, the declarant shall record, with regard to the structure or portion thereof constituting that convertible space, plans showing the location and dimensions of the vertical boundaries of each unit and/or limited common elements formed out of such space. Such plans shall be certified as to their accuracy and compliance with the provisions of this subsection by a licensed architect, licensed engineer or licensed land surveyor.

F. For the purposes of subsections A, B, and C, all provisions and requirements relating to units shall be deemed equally applicable to limited common elements. The limited common elements shall be labeled as such, and each limited common element depicted on the plats and plans shall bear the identifying number or numbers of the unit or units to which it is assigned, if it has been assigned, unless the provisions of subsection (e) of § 55-79.50 make such designations unnecessary.

§ 55-79.58:1. Bond to insure completion of improvements.

A. The declarant shall file with the ~~Real Estate~~ *Common Interest Community* Board a bond entered into by the declarant in the sum of 100 percent of the estimated cost of completion, to the extent of the declarant's obligation as stated in the declaration, of all improvements to the common elements of the condominium labeled in the plat or plats as "(NOT YET COMPLETED)" or "(NOT YET BEGUN)" located upon submitted land and which the declarant reasonably believes will not be substantially complete at the time of conveyance of the first condominium unit. Such bond shall be conditioned upon the faithful performance of the declarant's obligation to complete said improvements in strict conformity with the plans and specifications for the same as described in the declaration.

B. The declarant shall file with the ~~Real Estate~~ *Common Interest Community* Board a bond entered into by the declarant in the sum of 100 percent of the estimated cost of completion of a unit in which a time-share interest is conveyed before the unit has been certified as substantially complete in accordance with subsections A and B of § 55-79.58. The bond required by this subsection shall be conditioned upon the faithful performance of the declarant's obligation to complete said improvements in strict conformity with the plans and specifications for the same as described in the declaration.

C. All bonds required herein shall be executed by a surety company authorized to transact business in the Commonwealth of Virginia or by such other surety as is satisfactory to the Board.

D. The Board may promulgate reasonable regulations which govern the return of bonds submitted in accordance with this section.

§ 55-79.74. Control of condominium by declarant.

A. The condominium instruments may authorize the declarant, or a managing agent or some other person or persons selected or to be selected by the declarant, to appoint and remove some or all of the officers of the unit owners' association and/or its executive organ, or to exercise powers and responsibilities otherwise assigned by the condominium instruments and by this chapter to the unit owners' association, the officers, or the executive organ. The declarant or the managing agent or such other person or persons selected by the declarant to so appoint and remove officers and/or the executive organ or to exercise such powers and responsibilities otherwise assigned to the unit owners' association, the officers, or the executive organ shall be subject to liability as fiduciaries of the unit owners for their action or omissions during the period of declarant control as specified in the condominium instruments or if not so specified, within such period as defined in this section. But no amendment to the condominium instruments shall increase the scope of such authorization if there is any unit owner other than the declarant, and no such authorization shall be valid after the time limit set by the condominium instruments or after units to which three-fourths of the undivided interests in the common elements appertain have been conveyed, whichever occurs first. For the purposes of the preceding sentence only, the calculation of the fraction of undivided interest shall be based upon the total undivided interests assigned or to be assigned to all units registered with the ~~Real Estate~~ *Common Interest Community* Board pursuant to subsection B of § 55-79.92 hereof and described pursuant to subdivision (4) of subsection (a), subdivision (2) of subsection (b), or subdivision (8) of subsection (c), of § 55-79.54. The time limit initially set by the condominium instruments shall not exceed five years in the case of an expandable condominium, three years in the case of a condominium (other than an expandable condominium) containing any convertible land, or two years in the case of any other condominium. Such time period shall commence upon settlement of the first unit to be sold in any portion of the condominium.

B. If entered into any time prior to the expiration of the period of declarant control contemplated by subsection A hereof, no contract or lease entered into with the declarant or any entity controlled by the declarant, management contract, employment contract or lease of recreational or parking areas or

674 facilities, which is directly or indirectly made by or on behalf of the unit owners' association, its
675 executive organ, or the unit owners as a group, shall be entered into for a period in excess of two years.
676 Any such contract or agreement entered into on or after July 1, 1978, may be terminated without
677 penalty by the unit owners' association or its executive organ upon not less than ninety days' written
678 notice to the other party given not later than sixty days after the expiration of the period of declarant
679 control contemplated by subsection A hereof. Any such contract or agreement may be renewed for
680 periods not in excess of two years; however, at the end of any two-year period the unit owners'
681 association or its executive organ may terminate any further renewals or extensions thereof. The
682 provisions of this subsection shall not apply to any lease or leases which are referred to in § 55-79.48 or
683 which are subject to subsection (e) of § 55-79.54.

684 C. If entered into at any time prior to the expiration of the period of declarant control contemplated
685 by subsection A, any contract, lease or agreement, other than those subject to the provisions of
686 subsection B, may be entered into by or on behalf of the unit owners' association, its executive organ, or
687 the unit owners as a group, if such contract, lease or agreement is bona fide and is commercially
688 reasonable to the unit owners' association at the time entered into under the circumstances.

689 D. This section does not apply to any contract, incidental to the disposition of a condominium unit,
690 to provide to a unit owner for the duration of such unit owner's life, or for any term in excess of one
691 year, nursing services, medical services, other health-related services, board and lodging and care as
692 necessary, or any combination of such services. The rule of property law known as the rule restricting
693 unreasonable restraints on alienation shall not be applied to defeat any provision of the condominium
694 instruments requiring that the unit owners be parties to such contracts.

695 E. If the unit owners' association is not in existence or does not have officers at the time of the
696 creation of the condominium, the declarant shall, until there is such an association with such officers,
697 have the power and the responsibility to act in all instances where this chapter requires action by the
698 unit owners' association, its executive organ, or any officer or officers.

699 F. Thirty days prior to the expiration of the period of declarant control, the declarant shall notify the
700 governing body of the city, county or town in which the condominium is located of the forthcoming
701 termination of declarant control. Prior to the expiration of the thirty-day period, the local governing
702 body or an agency designated by the local governing body shall advise the principal elected officer of
703 the condominium unit owners' association of any outstanding violations of applicable building codes,
704 local ordinances or other deficiencies of record.

705 G. Within forty-five days from the expiration of the period of declarant control contemplated by
706 subsection A, the declarant shall deliver to the president of the unit owners' association or his designated
707 agent (i) all association books and records held by or controlled by the declarant including, without
708 limitation, the following items: minute books and all rules, regulations and amendments thereto which
709 may have been promulgated; (ii) a statement of receipts and expenditures from the date of the recording
710 of the condominium instruments to the end of the regular accounting period immediately succeeding the
711 first election of the board of directors by the unit owners not to exceed sixty days from the date of the
712 election, such statement being prepared in an accurate and complete manner, utilizing the accrual
713 method of accounting; (iii) a copy of the latest available approved plans and specifications for all
714 improvements in the project or as-built plans if available; (iv) all association insurance policies which
715 are currently in force; (v) written unexpired warranties of the contractors, subcontractors, suppliers, and
716 manufacturers, if any; (vi) any contracts in which the association is a contracting party, if any; and (vii)
717 a list of manufacturers of paints, roofing materials and other similar materials if specified for use on the
718 condominium property.

719 In the event that the unit owners' association is managed by a management company in which the
720 declarant, or its principals, have no pecuniary interest or management role, then such management
721 company shall have the responsibility to provide the documents and information as required by clauses
722 (i), (ii), (iv), and (vi) of this subsection.

723 H. This section shall be strictly construed to protect the rights of the unit owners.

724 § 55-79.79. Upkeep of condominiums; warranty against structural defects; statute of limitations for
725 warranty.

726 A. Except to the extent otherwise provided by the condominium instruments, all powers and
727 responsibilities, including financial responsibility, with regard to maintenance, repair, renovation,
728 restoration, and replacement of the condominium shall belong (i) to the unit owners' association in the
729 case of the common elements, and (ii) to the individual unit owner in the case of any unit or any part
730 thereof, except to the extent that the need for repairs, renovation, restoration or replacement arises from
731 a condition originating in or through the common elements or any apparatus located within the common
732 elements, in which case the unit owners' association shall have such powers and responsibilities. Each
733 unit owner shall afford to the other unit owners and to the unit owners' association and to any agents or
734 employees of either such access through his unit as may be reasonably necessary to enable them to
735 exercise and discharge their respective powers and responsibilities. But to the extent that damage is

inflicted on the common elements or any unit through which access is taken, the unit owner causing the same, or the unit owners' association if it caused the same, shall be liable for the prompt repair thereof.

B. Notwithstanding anything in this section to the contrary, the declarant shall warrant or guarantee, against structural defects, each of the units for two years from the date each is conveyed, and all of the common elements for two years. In the case of each unit the declarant shall also warrant that the unit is fit for habitation and constructed in a workmanlike manner so as to pass without objection in the trade. The two years referred to in this subsection shall begin as to each of the common elements whenever the same has been completed or, if later, (i) as to any common element within any additional land or portion thereof, at the time the first unit therein is conveyed, (ii) as to any common element within any convertible land or portion thereof, at the time the first unit therein is conveyed, and (iii) as to any common element within any other portion of the condominium, at the time the first unit therein is conveyed. For the purposes of this subsection, no unit shall be deemed conveyed unless conveyed to a bona fide purchaser. Any conveyance of a condominium unit transfers to the purchaser all of the declarant's warranties against structural defects imposed by this subsection. For the purposes of this subsection, structural defects shall be those defects in components constituting any unit or common element which reduce the stability or safety of the structure below accepted standards or restrict the normal intended use of all or part of the structure and which require repair, renovation, restoration, or replacement. Nothing in this subsection shall be construed to make the declarant responsible for any items of maintenance relating to the units or common elements.

C. (See Editor's note) An action for breach of any warranty prescribed by this section shall be commenced within five years after the date such warranty period began. However, no such action shall be maintained against the declarant unless a written statement by the claimant or his agent, attorney or representative, of the nature of the alleged defect has been sent to the declarant, by registered or certified mail, at his last known address, as reflected in the records of the ~~Real Estate Common Interest~~ Community Board, more than six months prior to the commencement of the action giving the declarant an opportunity to cure the alleged defect within a reasonable time. Sending the notice required by this subsection shall toll the statute of limitations for commencing a breach of warranty action for a period not to exceed six months.

§ 55-79.81. Insurance.

A. The condominium instruments may require the unit owners' association, or the executive organ or managing agent on behalf of such association, to obtain:

1. A master casualty policy affording fire and extended coverage in an amount consonant with the full replacement value of the structures within the condominium, or of such structures that in whole or in part comprise portions of the common elements.

2. A master liability policy, in an amount specified by the condominium instruments, covering the unit owners' association, the executive organ, if any, the managing agent, if any, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the condominium, and all unit owners and other persons entitled to occupy any unit or other portion of the condominium.

3. Such other policies as may be required by the condominium instruments, including, without limitation, workers' compensation insurance, liability insurance on motor vehicles owned by the association, and specialized policies covering lands or improvements in which the unit owners' association has or shares ownership or other rights.

B. Any unit owners' association collecting assessments for common expenses shall obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy ~~covering~~ *insuring the unit owner's association against losses resulting from theft or dishonesty committed by the officers, directors, and or persons employed by the unit owners' association, and or committed by any managing agent and or employees of the managing agent.* Such bond or insurance policy shall provide a ~~minimum of \$10,000 in~~ *coverage in an amount equal to the lesser of \$1 million or the amount of reserve balances of the unit owners' association and three times the monthly assessments of such unit owners' association. The minimum coverage amount shall be \$ 10,000.* The executive organ or managing agent may obtain such bond or insurance on behalf of the unit owners' association.

C. When any policy of insurance has been obtained by or on behalf of the unit owners' association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each unit owner by the officer required to send notices of meetings of the unit owners' association. Such notices shall be sent in accordance with the provisions of subsection A of § 55-79.75.

§ 55-79.84:1. Bond to be posted by declarant.

A. The declarant of a condominium containing units which are required by this chapter to be registered with the ~~Real Estate Common Interest~~ Community Board shall post a bond in favor of the unit owners' association with good and sufficient surety, in a sum equal to \$1,000 per unit, except that such sum shall not be less than \$10,000, nor more than \$100,000. Such bond shall be filed with the ~~Real~~

797 ~~Estate~~*Common Interest Community* Board and shall be maintained for so long as the declarant owns
798 more than ten percent of the units in the condominium or, if the declarant owns less than ten percent of
799 the units in the condominium, until the declarant is current in the payment of assessments. However, the
800 Board shall return a bond where the declarant owns one unit in a condominium containing less than ten
801 units, provided such declarant is current in the payment of assessments.

802 B. No bond shall be accepted for filing unless it is with a surety company authorized to do business
803 in the Commonwealth, or by such other surety as is satisfactory to the Board and such bond shall be
804 conditioned upon the payment of all assessments levied against condominium units owned by the
805 declarant. The Board may accept a letter of credit in lieu of the bond contemplated by this section.

806 The Board may promulgate reasonable regulations which govern the return of bonds submitted in
807 accordance with this section.

808 § 55-79.86. Administrative agency.

809 This chapter shall be administered by the ~~Real Estate~~ *Common Interest Community* Board which
810 hereinafter is called the agency.

811 § 55-79.89. Application for registration; fee.

812 A. The application for registration of the condominium shall be filed as prescribed by the agency's
813 regulations and shall contain the following documents and information:

814 1. An irrevocable appointment of the agency to receive service of any lawful process in any
815 noncriminal proceeding arising under this chapter against the applicant or his personal representative;

816 2. The states or jurisdictions in which an application for registration or similar document has been
817 filed, and any adverse order, judgment, or decree entered in connection with the condominium by the
818 regulatory authorities in each jurisdiction or by any court;

819 3. The applicant's name, address, and the form, date, and jurisdiction or organization; and the address
820 of each of its offices in this Commonwealth;

821 4. The name, address, and principal occupation for the past five years of every officer of the
822 applicant or person occupying a similar status or performing similar functions; the extent and nature of
823 his interest in the applicant or the condominium as of a specified date within thirty days of the filing of
824 the application;

825 5. A statement, in a form acceptable to the agency, of the condition of the title to the condominium
826 project including encumbrances as of a specified date within thirty days of the date of application by a
827 title opinion of a licensed attorney, not a salaried employee, officer or director of the applicant or
828 owner, or by other evidence of title acceptable to the agency;

829 6. Copies of the instruments which will be delivered to a purchaser to evidence his interest in the
830 unit and of the contracts and other agreements which a purchaser will be required to agree to or sign;

831 7. Copies of any management agreements, employment contracts or other contracts or agreements
832 affecting the use, maintenance or access of all or a part of the condominium;

833 8. A statement of the zoning and other governmental regulations affecting the use of the
834 condominium, including the site plans and building permits and their status, and also of any existing tax
835 and existing or proposed special taxes or assessments which affect the condominium;

836 9. A narrative description of the promotional plan for the disposition of the units in the
837 condominium;

838 10. Plats and plans of the condominium that comply with the provisions of § 55-79.58 other than the
839 certification requirements thereof, and which show all units and buildings containing units to be built
840 anywhere within the submitted land other than within the boundaries of any convertible lands, except
841 that the agency may establish by regulation or order requirements in lieu of the provisions of § 55-79.58
842 for plats and plans of a condominium located outside this Commonwealth;

843 11. The proposed public offering statement;

844 12. Any bonds required to be posted pursuant to the provisions of this chapter; and

845 13. Any other information, including any current financial statement, which the agency by its
846 regulations requires for the protection of purchasers.

847 B. If the declarant registers additional units to be offered for disposition in the same condominium he
848 may consolidate the subsequent registration with any earlier registration offering units in the
849 condominium for disposition under the same promotional plan.

850 C. The declarant shall immediately report any material changes in the information contained in an
851 application for registration.

852 D. Each application shall be accompanied by a fee in an amount established by the agency pursuant
853 to § 54.1-113. All fees shall be remitted by the agency to the State Treasurer, and shall be placed to the
854 credit of the ~~special fund of the Real Estate Board, which fund is hereby established,~~ *Common Interest*
855 *Community Management Information Fund established pursuant to § 55-529*, and shall be expended
856 solely for compliance with the provisions of this chapter.

857 § 55-79.93:1. Annual report by unit owners' association.

858 A. The unit owners' association shall file an annual report in a form and at such time as prescribed

by regulations of the agency. The filing of the annual report required by this section shall commence upon the termination of the declarant control period pursuant to § 55-79.74.

B. The agency may accept copies of forms submitted to other state agencies to satisfy the requirements of this section if such forms contain substantially the same information required by the agency.

C. The annual report shall be accompanied by a fixed fee in an amount established by the agency, together with an annual assessment in an amount equal to the lessor of \$1,000 (or such other amount as the agency may establish by regulation) or 0.02% of the association's gross assessment during the preceding calendar year. All fees shall be remitted to the State Treasurer and shall be placed to the credit of the Common Interest Community Management Information Fund established pursuant to § 55-529. Following the close of any biennium, nongeneral fund revenues generated by such fees in the past biennium in excess of the expenses allocated to the agency in its account within the Department of Professional and Occupational Regulation in such biennium shall be remitted to the State Treasurer and shall be placed to the credit of the Common Interest Community Management Information Fund established pursuant to § 55-529.

§ 55-79.95. Escrow of deposits.

A. Any deposit made in regard to any disposition of a unit, including a nonbinding reservation agreement, shall be held in escrow until delivered at settlement. Such escrow funds shall be deposited in a separate account designated for this purpose which is federally insured and located in Virginia; except where such deposits are being held by a real estate broker or attorney licensed under the laws of this Commonwealth such funds may be placed in that broker's or attorney's regular escrow account and need not be placed in a separate designated account. Such escrow funds shall not be subject to attachment by the creditors of either the purchaser or the declarant.

B. In lieu of escrowing deposits as provided in subsection A, the declarant of a condominium consisting of more than 50 units may:

1. Obtain and maintain a corporate surety bond issued by a surety authorized to do business in the Commonwealth, in the form and amount set forth below, or

2. Obtain and maintain an irrevocable letter of credit issued by a financial institution whose accounts are insured by the FDIC, in the form and amount set forth below.

The surety bond or letter of credit shall be maintained until (i) the granting of a deed to the unit, (ii) the purchaser's default under a purchase contract for the unit entitling the declarant to retain the deposit, or (iii) the refund of the deposit to the purchaser, whichever occurs first.

C. The surety bond shall be payable to the Commonwealth for the use and benefit of every person protected under the provisions of this chapter. The declarant shall file the bond with the Real Estate Common Interest Community Board. The surety bond may be either in the form of an individual bond for each deposit accepted by the declarant or, if the total amount of the deposits accepted by the declarant under this chapter exceeds \$10,000, it may be in the form of a blanket bond. If the bond is a blanket bond, the amount shall be as follows. If the amount of such deposits is:

1. \$75,000 or less, the blanket bond shall be \$75,000;

2. More than \$75,000 but less than \$200,000, the blanket bond shall be \$200,000;

3. \$200,000 or more but less than \$500,000, the blanket bond shall be \$500,000;

4. \$500,000 or more but less than \$1,000,000, the blanket bond shall be \$1,000,000; and

5. \$1,000,000 or more, the blanket bond shall be 100 percent of the amount of such deposits.

D. The letter of credit shall be payable to the Commonwealth for use and benefit of every person protected under this chapter. The declarant shall file the letter of credit with the Real Estate Common Interest Community Board. The letter of credit may be either in the form of an individual letter of credit for each deposit accepted by the declarant or, if the total amount of the deposits accepted by the declarant under this chapter exceeds \$10,000, it may be in the form of a blanket letter of credit. If the letter of credit is a blanket letter of credit, the amount shall be as follows. If the amount of such deposits is:

1. \$75,000 or less, the blanket letter of credit shall be \$75,000;

2. More than \$75,000 but less than \$200,000, the blanket letter of credit shall be \$200,000;

3. \$200,000 or more but less than \$500,000, the blanket letter of credit shall be \$500,000;

4. \$500,000 or more but less than \$1,000,000, the blanket letter of credit shall be \$1,000,000; and

5. \$1,000,000 or more, the blanket letter of credit shall be 100 percent of the amount of such deposits.

For the purposes of determining the amount of any blanket letter of credit that a declarant maintains in any calendar year, the total amount of deposits considered held by the declarant shall be determined as of May 31 in each calendar year and the amount of the letter of credit shall be in accordance with the amount of deposits held as of May 31.

§ 55-79.97. Resale by purchaser.

920 A. In the event of any resale of a condominium unit by a unit owner other than the declarant, and
921 subject to the provisions of subsection J and § 55-79.87 A, the unit owner shall disclose in the contract
922 that (i) the unit is located within a development which is subject to the Condominium Act, (ii) the Act
923 requires the seller to obtain from the unit owners' association a resale certificate and provide it to the
924 purchaser, (iii) the purchaser may cancel the contract within three days after receiving the resale
925 certificate, (iv) the purchaser has a right to request an update of the resale certificate in accordance with
926 subsection D, and (v) the right to receive the resale certificate and the right to cancel the contract are
927 waived conclusively if not exercised before settlement.

928 B. If the contract does not contain the disclosure required by subsection A, the purchaser's sole
929 remedy is to cancel the contract prior to settlement.

930 C. The information contained in the resale certificate shall be current as of a date specified on the
931 resale certificate. The purchaser may cancel the contract (i) within three days after the date of the
932 contract, if the purchaser receives the resale certificate on or before the date that the purchaser signs the
933 contract; (ii) within three days after receiving the resale certificate if the resale certificate is hand
934 delivered or delivered by electronic means and a receipt obtained; or (iii) within six days after the
935 postmark date if the resale certificate is sent to the purchaser by United States mail. Notice of
936 cancellation shall be provided to the unit owner or his agent by one of the following methods:

937 a. Hand delivery;

938 b. United States mail, postage prepaid, provided the sender retains sufficient proof of mailing, which
939 may be either a United States postal certificate of mailing or a certificate of service prepared by the
940 sender confirming such mailing;

941 c. Electronic means provided the sender retains sufficient proof of the electronic delivery, which may
942 be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate
943 of service prepared by the sender confirming the electronic delivery; or

944 d. Overnight delivery using a commercial service or the United States Postal Service.

945 In the event of a dispute, the sender shall have the burden to demonstrate delivery of the notice of
946 cancellation. Such cancellation shall be without penalty, and the unit owner shall cause any deposit to be
947 returned promptly to the purchaser. The unit owners' association may also send the resale certificate by
948 electronic means unless either the seller or the purchaser requests a paper certificate.

949 A resale certificate shall include the following:

950 1. An appropriate statement pursuant to subsection H of § 55-79.84 which need not be notarized and,
951 if applicable, an appropriate statement pursuant to § 55-79.85;

952 2. A statement of any expenditure of funds approved by the unit owners' association or the executive
953 organ which shall require an assessment in addition to the regular assessment during the current or the
954 immediately succeeding fiscal year;

955 3. A statement, including the amount, of all assessments and any other fees or charges currently
956 imposed by the unit owners' association and associated with the purchase, disposition and maintenance
957 of the condominium unit and the use of the common elements, and the status of the account;

958 4. A statement whether there is any other entity or facility to which the unit owner may be liable for
959 fees or other charges;

960 5. The current reserve study report or a summary thereof, a statement of the status and amount of
961 any reserve or replacement fund and any portion of the fund designated for any specified project by the
962 executive organ;

963 6. A copy of the unit owners' association's current budget or a summary thereof prepared by the unit
964 owners' association and a copy of the statement of its financial condition for the last fiscal year for
965 which a statement is available, including a statement of the balance due of any outstanding loans of the
966 unit owners' association;

967 7. A statement of the nature and status of any pending suits or unpaid judgments to which the unit
968 owners' association is a party which either could or would have a material impact on the association or
969 the unit owners or which relates to the unit being purchased;

970 8. A statement setting forth what insurance coverage is provided for all unit owners by the unit
971 owners' association, including any fidelity bond maintained by the unit owners' association, and what
972 additional insurance coverage would normally be secured by each individual unit owner;

973 9. A statement that any improvements or alterations made to the unit, or the limited common
974 elements assigned thereto, by the prior unit owner are not in violation of the condominium instruments;

975 10. A copy of the current bylaws, rules and regulations and architectural guidelines adopted by the
976 unit owners' association and the amendments thereto;

977 11. A statement of whether the condominium or any portion thereof is located within a development
978 subject to the Property Owners' Association Act (§ 55-508 et seq.) of Chapter 26 of this title;

979 12. A copy of the notice given to the unit owner by the unit owners' association of any current or
980 pending rule or architectural violation;

981 13. Certification, if applicable, that the association has filed with the Real Estate Board the annual

report required by § 55-79.93:1; which certification shall indicate the filing number assigned by the Real Estate Common Interest Community Board and the expiration date of such filing;

14. A statement of any limitation on the number of persons who may occupy a unit as a dwelling; and

15. A statement setting forth any restrictions, limitation or prohibition on the right of a unit owner to display the flag of the United States, including, but not limited to reasonable restrictions as to the size, time, place, and manner of placement or display of such flag.

Failure to receive copies of such documents shall not excuse any failure to comply with the provisions thereof.

The resale certificate, once received by the owner from the unit owners' association, shall be delivered by the owner to the purchaser. The unit owners' association shall have no obligation to deliver the resale certificate to the purchaser of the unit. The resale certificate shall not, in and of itself, be deemed a security within the meaning of § 13.1-501.

D. The purchaser may submit a copy of the contract to the unit owners' association with a request for assurance that statements previously furnished pursuant to subsection C remain materially unchanged, or, if there have been material changes, a statement specifying such changes. The purchaser shall be provided with such assurances or such statement within ten days of the receipt of such request by the unit owners' association. The purchaser may be required to pay the same fee charged a unit owner for the resale certificate, if any. Any fee shall reflect the actual cost incurred by the unit owners' association in providing the assurances, but shall not exceed \$0.10 per page in copying costs or a total of \$50 for all costs incurred in updating the resale certificate. The unit owners' association may also collect from the purchaser the actual costs incurred of any mailing or delivery requested by the purchaser pursuant to this subsection. In no event, however, shall the unit owners' association require reimbursement of any costs not expressly authorized in this subsection. Nor shall the unit owners' association charge any other fee for the preparation or issuance of such resale certificate or making such certificate available by electronic means except as expressly provided in this subsection.

E. In the absence of a written agreement to the contrary, the failure of the unit owners' association to provide the statement required by subsection D or the disclosure by such statement that there have been one or more material changes shall render the purchase contract void at the option of the purchaser.

F. The unit owners' association shall furnish the resale certificate upon the written request of any unit owner within 14 days of the receipt of such request. Payment of the actual costs of preparing the resale certificate may be required of the unit owner requesting it as a prerequisite to its issuance, but the total fee shall not exceed \$0.10 per page in copying costs or a total of \$100, including and not in addition to, any fee charged pursuant to subsection H of § 55-79.84 and § 55-79.85, for all costs incurred in preparing the resale certificate. However, the unit owners' association may:

1. Upon mutual agreement with the seller, collect for actual costs incurred, in addition to any fee charged pursuant to this subsection:

a. A rush fee, not to exceed \$25, for furnishing the resale certificate within three business days from the actual receipt of the request;

b. The actual cost of any mailing or delivery requested by the seller pursuant to this subsection; and

c. Any actual cost incurred at the request and with the consent of the purchaser; and

2. Collect a reasonable fee for preparing the resale certificate, not to exceed \$325, if the amount of the fee (i) reflects actual cost, (ii) is established in the contract between the unit owners' association and any ~~managing common interest community manger agent~~, and (iii) is disclosed on the unit owners' association's website or the website of its ~~managing agentcommon interst community manager~~. Neither the unit owners' association nor its ~~management agentcommon interest community manager~~, if any, shall require cash or certified funds unless the unit owner is delinquent in any payments due to the unit owners' association in excess of 30 days or if a check of the unit owner made payable to the unit owners' association was returned for insufficient funds within the last six months. In no event, however, shall the unit owners' association require reimbursement of any costs not expressly authorized in this subsection. Nor shall the unit owners' association charge any other fee for the preparation or issuance of such resale certificate or making such certificate available by electronic means except as expressly provided in this subsection.

Except to the extent that the condominium instruments provide otherwise, any unit owners' association authorized to charge a fee for the furnishing of a resale certificate pursuant to this subsection shall promptly pay the fee to the ~~managing agent common interest community manager~~ where the ~~managing agent common interest community manager~~ furnishes the resale certificate and shall assess the fee against the unit for which the certificate was prepared. The fee shall be treated as an assessment against the unit owner's condominium unit for the purposes of § 55-79.84. The purchaser shall not be responsible for payment of the fee. The maximum allowable amount of such fee shall adjust annually based on the annual increases in the United States Average Consumer Price Index for all items, all

1043 urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U. S. Department of
1044 Labor.

1045 G. When a resale certificate has been issued as required by this section, the unit owners' association
1046 shall, as to the purchaser, be bound by the statements set forth therein as to the status of the assessment
1047 account and the status of the unit with respect to any violation of the condominium instruments as of
1048 the date of the resale certificate unless the purchaser had actual knowledge that the contents of the resale
1049 certificate were in error.

1050 H. If the unit owners' association has been requested to furnish the resale certificate required by this
1051 section and has been paid the appropriate fee, its failure to provide the resale certificate in substantially
1052 the form provided herein within fourteen days from the actual receipt of the request by an officer,
1053 director or agent of the unit owners' association shall be deemed a waiver of any claim for delinquent
1054 assessments or of any violation of the condominium instruments, rules and regulations, or architectural
1055 guidelines existing as of the date of the request with respect to the subject unit. The unit owners'
1056 association shall be liable to the seller in an amount equal to the actual damages sustained by the seller
1057 in an amount not to exceed \$500. The purchaser shall nevertheless be obligated to abide by the
1058 condominium instruments, rules and regulations, and architectural guidelines of the unit owners'
1059 association as to all matters arising after the date of the settlement of the sale. The settlement agent, as
1060 defined in § 6.1-2.20, when transmitting funds to a unit owners' association or otherwise upon request,
1061 shall provide the unit owners' association with (i) the name of the seller, (ii) the name and address of
1062 the purchaser, (iii) the address of the subject property, (iv) the date of settlement, and (v) a brief
1063 explanation of the application of any funds transmitted. Providing a copy of the HUD-1 settlement
1064 statement, unless otherwise prohibited, shall satisfy these requirements.

1065 I. Subject to the provisions of § 55-79.87, but notwithstanding any other provisions of this chapter,
1066 the provisions and requirements of this section shall apply to any such resale of a condominium unit
1067 created under the provisions of the Horizontal Property Act (§ 55-79.1 et seq.).

1068 J. The resale certificate required by this section need not be provided in the case of:

- 1069 1. A disposition of a unit by gift;
1070 2. A disposition of a unit pursuant to court order if the court so directs; or
1071 3. A disposition of a unit by foreclosure or deed in lieu of foreclosure.

1072 K. In any transaction in which a resale certificate is required and a trustee acts as the seller in the
1073 sale or resale of a unit, the trustee shall obtain the resale certificate from the unit owners' association
1074 and provide the resale certificate to the purchaser.

1075 § 55-79.98. General powers and duties of the Common Interest Community Board.

1076 (a) The agency shall prescribe reasonable rules which shall be adopted, amended or repealed in
1077 compliance with law applicable to the administrative procedure of agencies of government. The rules
1078 shall include but not be limited to provisions for advertising standards to assure full and fair disclosure;
1079 provisions for operating procedures; and other rules as are necessary and proper to accomplish the
1080 purpose of this chapter.

1081 (b) The agency by rule or by an order, after reasonable notice and hearing, may require the filing of
1082 advertising material relating to condominiums prior to its distribution.

1083 (c) If it appears that a person has engaged or is about to engage in an act or practice constituting a
1084 violation of a provision of this chapter, or a rule or order hereunder, the agency, with or without prior
1085 administrative proceedings may bring an action in the circuit court of the city or county in which any
1086 portion of the condominium is located to enjoin the acts or practices and to enforce compliance with
1087 this chapter or any rule or order hereunder. Upon proper showing, injunctive relief of temporary
1088 restraining orders shall be granted. The agency is not required to post a bond in any court proceedings
1089 or prove that any other adequate remedy at law exists.

1090 (c1) With respect to any lawful process served upon the agency pursuant to the appointment made in
1091 accordance with subdivision A 1 of § 55-79.89, the agency shall forthwith cause the same to be sent by
1092 registered or certified mail to any of the principals, officers, directors, partners, or trustees of the
1093 declarant listed in the application for registration at the last address listed in such application or any
1094 annual report.

1095 (d) The agency may intervene in any suit involving the declarant. In any suit by or against a
1096 declarant involving a condominium, the declarant shall promptly furnish the agency notice of the suit
1097 and copies of all pleadings.

1098 (e) The agency may:

- 1099 (1) Accept registrations filed in other states or with the federal government;
1100 (2) Contract with similar agencies in this Commonwealth or other jurisdictions to perform
1101 investigative functions;
1102 (3) Accept grants in aid from any governmental source.

1103 (f) The agency shall cooperate with similar agencies in other jurisdictions to establish uniform filing
1104 procedures and forms, uniform public offering statements, advertising standards, rules and common

administrative practices.

§ 55-362. Definitions.

When used in this chapter, or in a time-share instrument, unless the context requires a different meaning:

"Additional land" has the meaning ascribed to it in subsection C of § 55-367;

"Alternative purchase" means anything valued in excess of \$100 which is offered to a potential purchaser by the developer during the developer's sales presentation and which is purchased by such potential purchaser for more than \$100, even though the purchaser did not purchase a time-share. An alternative purchase is not a time-share. A membership camping contract as defined in § 59.1-313 is not an alternative purchase. An alternative purchase shall be registered with the Board unless it is otherwise registered as a travel service under the Virginia Travel Club Act (§ 59-445 et seq.), and shall include, without limitation, vacation packages (howsoever denominated) and exit programs (howsoever denominated);

"Association" means the association organized under the provisions of § 55-368;

"Board" means the *Real Estate Common Interest Community* Board, an agency within the meaning of the Administrative Process Act (§ 2.2-4000 et seq.);

"Board of directors" means an executive and administrative entity, by whatever name denominated, designated in a time-share estate project instrument as the governing body of the time-share estate owners' association;

"Common elements" means the real estate, improvements thereon, and the personalty situate within the time-share project that are subject to the time-share program. "Common elements" shall not include the units and the time-shares;

"Consumer documents" means the aggregate of the following documents: the reverter deed, note, and the deed of trust. A consumer document shall be deemed one of the consumer documents;

"Contract," "sales contract," "purchase contract," "contract of purchase" or "contract to purchase" shall be interchangeable throughout this chapter and shall mean any legally binding instrument executed by the developer and a purchaser whereby the developer is obligated to sell and the purchaser is obligated to purchase either a time-share and its incidental benefits or an alternative purchase registered under this chapter;

"Conversion time-share project" means a real estate improvement, which prior to the disposition of any time-share, was wholly or partially occupied by persons as their permanent residence or on a transient pay-as-you-go basis other than those who have contracted for the purchase of a time-share and those who occupy with the consent of such purchasers;

"Deed" means the instrument by which title to a time-share estate is transferred from one person to another person;

"Deed of trust" means the instrument conveying the time-share estate that is given as security for the payment of the note;

"Default" means either a failure to have made any payment in full and on time or a violation of a performance obligation required by a consumer document for a period of no less than 60 days;

"Developer" means any person or group of persons acting in concert who (i) offers to dispose of a time-share or its or their interest in a time-share unit for which there has not been a previous disposition or (ii) applies for registration of the time-share program;

"Developer control period" has the meaning ascribed to it in § 55-369;

"Development right" means any right reserved by the developer to create additional units which may be dedicated to the time-share program;

"Dispose" or "disposition" means a transfer of a legal or equitable interest in a time-share, other than a transfer or release of security for a debt;

"Exchange agent" or "exchange company" means a person or persons who exchange or offer to exchange time-shares in an exchange program with other time-shares;

"Exchange program" means any opportunity or procedure for the assignment or exchange of time-shares among owners in other time-share programs as evidenced by a past or present written agreement executed between an exchange company and the developer or the time-share estate association; however, an "exchange program" shall not be either an incidental benefit or an opportunity or procedure whereby a time-share owner can exchange his time-share for another time-share within either the same time-share or another time-share project owned in part by the developer;

"Guest" means a person who is on the project, additional land or development at the request of an owner, developer, association or managing agent, or a person otherwise legally entitled to be thereon. A guest includes, without limitation, family members of owners, time-share exchange participants, merchants, purveyors, vendors and employees thereof, and of the developer and association.

"Incidental benefit" means anything valued in excess of \$100 provided by the developer that is acquired by a purchaser upon acquisition of a time-share and includes without limitation exchange

1166 rights, travel insurance, bonus weeks, upgrade entitlements, travel coupons, referral awards, and golf and
1167 tennis packages. An incidental benefit is not a time-share or an exchange program. An incidental benefit
1168 shall not be registered with the Board;

1169 "Inherent risks of project activity" mean those dangers or conditions that are an integral part of a
1170 project activity, including certain hazards, such as surface and subsurface conditions; natural conditions
1171 of land, vegetation, and waters; the behavior of wild or domestic animals; and ordinary dangers of
1172 structures or equipment ordinarily used in association or time-share operations. Inherent risks of project
1173 activity also include the potential of a participant to act in a negligent manner that may contribute to
1174 injury to the participant or others, including failing to follow instructions given by the project
1175 professional or failing to exercise reasonable caution while engaging in the project activity.

1176 "Lien holder" means either a person who holds an interest in an encumbrance that is not released of
1177 record as to a purchaser or such person's successor in interest who acquires title to the time-share project
1178 at foreclosure or by deed in lieu of foreclosure, or other instrument however denominated;

1179 "Managing agent" means a person who undertakes the duties, responsibilities, and obligations of the
1180 management of a time-share project;

1181 "Managing entity" means the managing agent or, if there is no managing agent, the time-share
1182 owners' association in a time-share estate project and the developer in a time-share use project;

1183 "Material change" means a change in any information or document disclosed in or attached to the
1184 public offering statement which renders inaccurate, incomplete or misleading any information or
1185 document in such a way as to affect substantially a purchaser's rights or obligations, but shall not
1186 include a change (i) in the real estate tax assessment or rate, utility charges or deposits, maintenance
1187 fees, association dues, assessments, special assessments or any recurring time-share expense item
1188 provided the change is made known (a) immediately to the prospective purchaser by a written addendum
1189 in the public offering statement and (b) to the Board by filing with the developer's annual report copies
1190 of the updated changes occurring over the immediately preceding 12 months; (ii) which is an aspect or
1191 result of the orderly development of the time-share project in accordance with the time-share instrument;
1192 (iii) resulting from new, updated, or amended information contained in the annual report prepared and
1193 distributed pursuant to § 55-370.1; (iv) correcting spelling, grammar, omissions or other similar errors
1194 not affecting the substance of the public offering statement; or (v) occurring in the issuance of an
1195 exchange company's updated annual report or disclosure document, provided upon its receipt by the
1196 developer, it shall be distributed in lieu of all others in order to satisfy § 55-374;

1197 "Note" means the instrument that evidences the debt occasioned by the deferred purchase of a
1198 time-share;

1199 "Offering" or "offer" means any act to sell, solicit, induce, or advertise, which originates in this
1200 Commonwealth, whether by radio, television, telephone, newspaper, magazine, or mail, whereby a
1201 person is given an opportunity to acquire a time-share;

1202 "Participant" means any person, other than a project professional, who engages in a project activity.

1203 "Person" means one or more natural persons, corporations, partnerships, associations, trustees of a
1204 trust, limited liability companies, other entities, or any combination thereof capable of holding title to
1205 real property;

1206 "Possibility of reverter" means a provision contained in a reverter deed whereby the time-share estate
1207 automatically reverts or transfers back to the developer upon satisfaction of the requirements imposed by
1208 § 55-376.1;

1209 "Product" means each time-share and its incidental benefits and all alternative purchases that are
1210 registered with the Board pursuant to this chapter;

1211 "Project" means the same as the term "time-share project";

1212 "Project activity" means any activity carried out or conducted on a common element, within a
1213 time-share unit or elsewhere in the project, additional land or development, that allows owners, their
1214 guests, and members of the general public to view, observe, participate or enjoy activities, including
1215 swimming pools, spas, sporting venues, and cultural, historical or harvest-your-own activities, other
1216 amenities and events, or natural activities and attractions for recreational, entertainment, educational or
1217 social purposes. An activity is a project activity whether or not the participant paid to participate in the
1218 activity.

1219 "Project instrument" means any recorded documents, by whatever name denominated, which create
1220 the time-share project and program and which may contain restrictions or covenants regulating the use,
1221 occupancy, or disposition of time-shares in a project;

1222 "Project professional" means any person who is engaged in the business of providing one or more
1223 project activities, whether or not for compensation. For the purposes of this definition, the developer,
1224 association, and managing entity shall each be deemed a project professional.

1225 "Public offering statement" means the statement required by § 55-374;

1226 "Purchaser" means any person other than a developer or lender who owns or acquires a product, or
1227 who otherwise enters into a contract for the purchase of a product;

1228 "Reverter deed" means the deed from developer to a grantee that contains a possibility of reverter;
 1229 "Sales person" means a person who sells or offers to sell time-share interests in a time-share
 1230 program;
 1231 "Situs" means the place outside the Commonwealth where a developer's time-share project is located;
 1232 "Situs Time-Share Act" means the Act, howsoever denominated, that regulates the offering,
 1233 disposition, and sale of time-shares applicable to the property outside the Commonwealth where the
 1234 time-share project is located;
 1235 "Time-share" means either a time-share estate or a time-share use plus its incidental benefits;
 1236 "Time-share estate" means a right to occupy a unit or any of several units during five or more
 1237 separated time periods over a period of at least five years, including renewal options, coupled with a
 1238 freehold estate or an estate for years in a time-share project or a specified portion thereof;
 1239 "Time-share estate occupancy expense" has the meaning ascribed to it in § 55-369;
 1240 "Time-share estate subject to reverter" means a time-share estate (i) entitling the holder thereof to
 1241 occupy units not more than four weeks in any one year period; and (ii) for which the down payment is
 1242 not more than 20 percent of the total purchase price of the time-share estate;
 1243 "Time-share expense" means (i) expenditures, fees, charges, or liabilities incurred with respect to the
 1244 operation, maintenance, administration or insuring of the time-shares, units, and common elements
 1245 comprising the entire time-share project, whether or not incurred for the repair, renovation, upgrade,
 1246 refurbishing or capital improvements; and (ii) any allocations of reserves;
 1247 "Time-share instrument" means any document, however denominated, which creates the time-share
 1248 project and program, and which may contain restrictions or covenants regulating the use, occupancy, or
 1249 disposition of time-shares in a project;
 1250 "Time-share owner" or "owner" means a person who is an owner or co-owner of a time-share other
 1251 than as security for an obligation;
 1252 "Time-share program" or "program" means any arrangement of time-shares in one or more time-share
 1253 projects whereby the use, occupancy, or possession of real property has been made subject to either a
 1254 time-share estate or time-share use in which such use, occupancy, or possession circulates among owners
 1255 of the time-shares according to a fixed or floating time schedule on a periodic basis occurring over any
 1256 period of time in excess of five years;
 1257 "Time-share project" means all of the real property subject to a time-share program created by the
 1258 execution of a time-share instrument;
 1259 "Time-share use" means a right to occupy a time-share unit or any of several time-share units during
 1260 five or more separated time periods over a period of at least five years, including renewal options, not
 1261 coupled with a freehold estate or an estate for years in a time-share project or a specified portion
 1262 thereof. "Time-share use" shall not mean a right to use which is subject to a first-come, first-served,
 1263 space-available basis as might exist in a country club, motel, hotel, health spa, campground, or
 1264 membership or resort facility;
 1265 "Time-share unit" or "unit" means the real property or real property improvement in a project which
 1266 is divided into time-shares and designated for separate occupancy and use.
 1267 § 55-362.1. Administrative agency.
 1268 This chapter shall be administered by the ~~Real Estate~~ *Common Interest Community* Board, which is
 1269 herein called the "Board."
 1270 § 55-374.1. Certain advertising practices regulated.
 1271 A. Any offering which includes a gift or prize must disclose therein, with the same prominence as
 1272 such offer:
 1273 1. The retail value of each gift or prize;
 1274 2. The approximate odds against any given person obtaining each gift or prize if all persons to whom
 1275 the advertisement is disseminated do what is necessary to qualify for the award of the gift or prize;
 1276 3. If the number of gifts or prizes to be awarded is limited, a statement of the number of gifts or
 1277 prizes to be awarded or in lieu thereof, the nature of such limitation;
 1278 4. All rules, terms, requirements, and conditions which must be fulfilled before a prospective
 1279 purchaser may claim any gift or prize, including whether the prospective purchaser is required to attend
 1280 a sales presentation in order to receive the gift or prize;
 1281 5. The date upon which the offer expires; and
 1282 6. A statement to the effect that the offer is being made for the purpose of soliciting the purchase of
 1283 a time-share, time-share interest, interval ownership, interval ownership interest, vacation ownership,
 1284 vacation ownership interest or product, as appropriate.
 1285 B. Any gift or prize offered in connection with an offering shall be delivered to the prospective
 1286 purchaser no later than the day the purchaser attends a sales presentation, if required, and if not, on the
 1287 day the purchaser appears to claim it, whether or not he purchases a time-share. In the event the supply
 1288 of gifts or prizes is exhausted at the time required for delivery, the developer shall give the prospective

1289 purchaser a written, unconditional promise to deliver such gift or prize no later than thirty days from the
1290 date required for delivery. If such gift or prize is not obtainable, the developer shall deliver an item of
1291 equal or greater value.

1292 C. The offering or sale of any product registered with the Board is exempt from the Virginia Travel
1293 Club Act (§ 59.1-445 et seq.), the Virginia Condominium Act (§ 55-79.39 et seq.), the Virginia
1294 Securities Act (§ 13.1-501 et seq.), the Virginia Home Solicitation Sales Act (§ 59.1-21.1 et seq.), the
1295 Subdivided Land Sales Act (§ 55-336 et seq.), and the Wet Settlement Act (§ 6.1-2.10 et seq.). If any
1296 provision of this section is in conflict with the provisions in, and the Prizes and Gifts Act (§ 59.1-415 et
1297 seq.); the provisions of the Prizes and Gifts Act shall control.

1298 § 55-374.2. Exchange programs.

1299 A. Any exchange company which offers an exchange program in the Commonwealth shall prepare
1300 and register with the Board a disclosure document including, but not limited to, the following:

1301 1. The name and address of the exchange company;

1302 2. The names and addresses of the top three officers, all directors, and, if the exchange company is
1303 privately held, all shareholders owning five percent or more interest in the exchange company;

1304 3. Whether the exchange company or any of its officers or directors has any legal or beneficial
1305 interest in any developer or managing agent for any time-share program participating in the exchange
1306 program and, if so, the name and location of the time-share project and the nature of the interest;

1307 4. Unless the exchange company is also the developer or an affiliate, a statement that the purchaser's
1308 contract with the exchange company is a contract separate and distinct from the sales contract;

1309 5. Whether the purchaser's participation in the exchange program is dependent upon the continued
1310 affiliation of the time-share project with the exchange program;

1311 6. Whether the purchaser's membership or participation, or both, in the exchange program is
1312 voluntary or mandatory;

1313 7. A complete and accurate description of the terms and conditions of the purchaser's contractual
1314 relationship with the exchange company and the procedure by which changes in the terms and
1315 conditions of the exchange contract may be made;

1316 8. A complete and accurate description of the procedure to qualify for and effectuate exchanges;

1317 9. A complete and accurate description of all limitations, restrictions, or priorities employed in the
1318 operation of the exchange program including, but not limited to, limitations on exchanges based on
1319 seasonality, unit size, or levels of occupancy, expressed in boldfaced type, and, in the event that such
1320 limitations, restrictions, or priorities are not uniformly applied by the exchange program, a clear
1321 description of the manner in which they are applied;

1322 10. Whether exchanges are arranged on a space available basis and whether any guarantees of
1323 fulfillment of specific requests for exchanges are made by the exchange program;

1324 11. Whether and under what circumstances an owner, in dealing with the exchange company, may
1325 lose the use of occupancy of his time-share in any properly applied for exchange, without being
1326 provided with substitute accommodations by the exchange company;

1327 12. The fees or range of fees for participation by owners in the exchange program, a statement of
1328 whether any such fees may be altered by the exchange company, and the circumstances under which
1329 alterations may be made;

1330 13. The name and address of the site of each time-share property, accommodation or facility
1331 participating in the exchange program;

1332 14. The number of units in each property participating in the exchange program which are available
1333 for occupancy and which qualify for participation in the exchange program, expressed within the
1334 following numerical groupings: 1-5, 6-10, 11-20, 21-50, and 51 and over;

1335 15. The number of owners with respect to each time-share program or other property who are
1336 eligible to participate in the exchange program, expressed within the following numerical groupings:
1337 1-100, 101-249, 250-499, 500-999, and 1,000 and over, and a statement of the criteria used to determine
1338 those owners currently eligible to participate in the exchange program;

1339 16. The disposition made by the exchange company of time-shares deposited with the exchange
1340 program by owners eligible to participate in the exchange program and not used by the exchange
1341 company in effecting exchanges;

1342 17. The following information, which, except as provided in subsection B of this section, shall be
1343 independently audited by a certified public accountant or accounting firm in accordance with the
1344 standards of the Accounting Standards Board of the American Institute of Certified Public Accountants
1345 and reported for each year no later than July 1 of the succeeding year, beginning no later than July 1,
1346 1985:

1347 a. The number of owners enrolled in the exchange program. Such numbers shall disclose the
1348 relationship between the exchange company and owners as being either fee paying or gratuitous in
1349 nature;

1350 b. The number of time-share properties, accommodations or facilities eligible to participate in the

exchange program;

c. The percentage of confirmed exchanges, which shall be the number of exchanges confirmed by the exchange company divided by the number of exchanges properly applied for, together with a complete and accurate statement of the criteria used to determine whether an exchange request was properly applied for;

d. The number of time-shares for which the exchange company has an outstanding obligation to provide an exchange to an owner who relinquished a time-share during the year in exchange for a time-share in any future year;

e. The number of exchanges confirmed by the exchange company during the year;

18. A statement in boldfaced type to the effect that the percentage described in subdivision 17 c of this subsection is a summary of the exchange requests entered with the exchange company in the period reported and that the percentage does not indicate a purchaser's or owner's probabilities of being confirmed to any specific choice or range of choices, since availability at individual locations may vary.

B. The information required by subsection A shall be accurate as of a date which is no more than thirty days prior to the date on which the information is delivered to the purchaser, except that the information required by subsection A, subdivisions 2, 12, 13, 14, 15 and 16 shall be accurate as of December 31 of the preceding year if the information is delivered between July 1 and December 31 of any year; information delivered between January 1 and June 30 of any year shall be accurate as of December 31 of the year prior to the preceding year. At no time shall such information be accurate as of a date which is more than eighteen months prior to the date of delivery. All references in this section to the word "year" shall mean calendar year.

C. In the event an exchange company offers an exchange program directly to the purchaser, the exchange company shall deliver to such purchaser, simultaneously with such offering and prior to the execution of any contract between the purchaser and the exchange company, the information set forth in subsection A, above. The requirements of this subsection shall not apply to any renewal of a contract between a purchaser and an exchange company.

D. Each exchange company must include the statement set forth in subdivision 18 of subsection A on all promotional brochures, pamphlets, advertisements, or other materials disseminated by the exchange company which also contain the percentage of confirmed exchanges described in subdivision 17 c of subsection A.

E. An exchange company shall, on or before July 1 of each year, file with the Board and the association for the time-share program in which the time-shares are offered or disposed, the information required by this section with respect to the preceding year. If the Board determines that any of the information supplied fails to meet the requirements of this section, the Board may undertake enforcement action against the exchange company in accordance with the provisions of Article 6 (§ 55-396 et seq.) of this chapter. No developer shall have any liability arising out of the use, delivery or publication by the developer of written information provided to it by the exchange company pursuant to this section. Except for written information provided to the developer by the exchange company, no exchange company shall have any liability with respect to (i) any representation made by the developer relating to the exchange program or exchange company, or (ii) the use, delivery or publication by the developer of any information relating to the exchange program or exchange company. The failure of the exchange company to observe the requirements of this section, or the use by it of any unfair or deceptive act or practice in connection with the operation of the exchange program, shall be a violation of this section.

F. The Board may establish by regulation reasonable fees for registration of the exchange company disclosure document. All fees shall be remitted by the Board to the Treasurer of the Commonwealth, and shall be placed to the credit of the ~~special fund of the Real Estate Board Common Interest Community Managment Information Fund pursuant to § 55-529.~~

§ 55-375. Escrow of deposits.

A. Any deposit made in connection with the purchase or reservation of a product shall be held in escrow. All cash deposits shall be held in a separate bank account labeled and designated solely for that purpose.

Such escrow account shall be insured by an instrumentality of the federal government and located in Virginia. All deposits shall be held in escrow until (i) delivered to the developer upon expiration of the purchaser's cancellation period provided the purchaser's right of cancellation has not been exercised, (ii) delivered to the developer because of the purchaser's default under a contract to purchase a time-share, or (iii) refunded to the purchaser. Failure to establish escrow accounts or to make the deposits as required by this section is prima facie evidence of willful violation of this section.

B. The developer shall disclose in the contract or in the public offering that the deposit may not be held in escrow after expiration of the cancellation period and that such deposit is not protected as an escrow after expiration of the cancellation period. This disclosure shall include a statement of whether or

not the developer reserves the option to sell or assign any promissory note given by a purchaser to another entity, whether or not such entity is affiliated with the developer. Both disclosures shall appear in boldfaced type of a minimum size of ten points.

C. There shall be filed with the ~~Real Estate~~ *Common Interest Community* Board a bond, letter of credit, or cash for the purpose of protecting all deposits escrowed pursuant to subsection A, in favor of the time-share purchasers. The bond, letter of credit, or cash shall be in an amount equal to the total of the deposits in escrow at any given time or \$25,000, whichever is greater. Such bond, letter of credit, or cash shall be maintained for so long as the developer offers time-shares in the project. The bond shall be with a surety company authorized to do business in Virginia.

§ 55-392.1. Filing fee.

The Board may by regulation establish reasonable fees for registration. Until such regulations are adopted by the Board, the fee shall be in an amount equal to \$1 per time-share, except that the initial application fee shall not be less than \$500 nor more than \$1,500, and the fee for any application for registration of additional units shall be not less than \$200. All fees shall be remitted by the Board to the Treasurer of the Commonwealth, and shall be placed to the credit of the ~~special fund of the Real Estate Board~~ *Common Interest Community Management Information Fund established pursuant to § 55-529.*

§ 55-484. Resales of cooperative interests.

A. Except in the case of a sale where delivery of a public offering statement is required, or unless exempt under subsection B of § 55-476, a proprietary lessee shall furnish to a purchaser before execution of any contract for sale of a cooperative interest, or otherwise before conveyance, a copy of the declaration, the bylaws, the rules or regulations of the association and a certificate containing:

1. A statement disclosing the effect on the proposed disposition of any right of first refusal or other restraint on the free alienability of the cooperative interest;

2. A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling proprietary lessee;

3. A statement of any other fees payable by proprietary lessees;

4. A statement of any capital expenditures anticipated by the association for the current and next two succeeding fiscal years;

5. The current reserve study report or a summary thereof and a statement of the status and amount of any reserve or replacement fund and of any portions of those reserves designated by the association for any specified projects;

6. The most recent regularly prepared balance sheet and income and expense statement, if any, of the association, including the amount of any debt owed by the association or to be assumed by the association, inclusive of principal and any accrued interest, loan fees and other similar charges;

7. The current operating budget of the association;

8. A statement of any unsatisfied judgments against the association and the status of any pending suits in which the association is a defendant;

9. A statement describing any insurance coverage provided for the benefit of proprietary lessees;

10. A statement as to whether the executive board has knowledge that any alterations or improvements to the unit or to the limited common elements assigned thereto violate any provision of the declaration;

11. A statement as to whether the executive board has knowledge of any violations of the health or building codes with respect to the unit, the limited common elements assigned thereto or any other portion of the cooperative;

12. A statement of the remaining term of any leasehold estate affecting the cooperative and the provisions governing any extension or renewal thereof;

13. Except where no public offering statement was prepared, a statement that the public offering statement and any amendments thereto are records of the association available for inspection by the purchaser;

14. An accountant's statement, if any was prepared, as to the deductibility for federal income taxes purposes by the proprietary lessee of real estate taxes and interest paid by the association;

15. A statement of any restrictions in the declaration affecting the amount that may be received by a proprietary lessee upon sale, condemnation or loss to the unit or the cooperative on termination of the cooperative; and

16. Certification, if applicable, that the proprietary lessees' association has filed with the ~~Real Estate~~ *Common Interest Community* Board the annual report required by § 55-504.1; which certification shall indicate the filing number assigned by the ~~Real Estate~~ *Common Interest Community* Board and the expiration date of such filing.

B. The association, within 10 days after a request by a proprietary lessee, shall furnish a certificate containing the information necessary to enable the proprietary lessee to comply with this section. A proprietary lessee providing a certificate pursuant to subsection A is not liable to the purchaser for any erroneous information provided by the association and included in the certificate.

C. A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the association. A proprietary lessee is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the purchase contract is voidable by the purchaser until the certificate has been provided and for five days thereafter or until conveyance, whichever first occurs.

§ 55-487. Conversion buildings.

A. A declarant of a cooperative containing conversion buildings shall give each of the tenants of a conversion building formal notice of the conversion at the time the cooperative is registered by the agency. This notice shall advise each tenant of (i) the offering price of the cooperative interests for the unit he occupies, (ii) the projected common expense assessments against that cooperative interest for at least the first year of the cooperative's operation, (iii) any relocation services, public or private, of which the declarant is aware, (iv) any measure taken or to be taken by the declarant to reduce the incidence of tenant dislocation, and (v) the details of the relocation plan, if any is provided by the declarant, to assist tenants in relocating. No tenant or subtenant may be required to vacate upon less than 120 days' notice, except by reason of nonpayment of rent, waste or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy may not be altered during that period. Until the expiration of the 120-day period, the declarant shall have no right of access to the unit except as provided herein and in subsection A of § 55-248.18 and except that, upon 45 days' written notice to the tenant, the declarant may enter the unit in order to make additional repairs, decorations, alterations or improvements, provided (i) the making of the same does not constitute an actual or constructive eviction of the tenant; and (ii) such entry is made either with the consent of the tenant or only at times when the tenant is absent from the unit. Failure to give notice as required by this section is a defense to an action for possession. The declarant shall also provide general notice to the tenants of the cooperative or proposed cooperative at the time of application to the agency, in addition to the formal notice required by this subsection.

B. For sixty days after delivery or mailing of the formal notice described in subsection A, the person required to give the notice shall offer to convey the cooperative interest for each unit or proposed unit occupied for residential use to the tenant who leases the unit associated with that cooperative interest. A specific statement of the purchase price and the amount of any initial or special cooperative fee due from the purchaser on or before settlement of the purchase contract and the basis of such fee shall be given to the tenant. If a tenant fails to purchase the cooperative interest during that 60-day period, the offeror may not offer to dispose of an interest in that cooperative interest during the following 180 days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant. This subsection does not apply to any cooperative interest in a conversion building if the unit which is part of that cooperative interest will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

C. If a seller, in violation of subsection B, conveys a cooperative interest to a purchaser for value who has no knowledge of the violation, that conveyance extinguishes any right a tenant may have under subsection B to purchase that cooperative interest if the deed states that the seller has complied with subsection B, but does not affect the right of a tenant to recover damages from the seller for a violation of subsection B.

D. If a notice of conversion specifies a date by which a unit or proposed unit must be vacated, and otherwise complies with the provisions of §§ 55-248.6 and 55-248.15, the notice also constitutes a notice to vacate as specified by §§ 55-222, 55-248.6 and 55-248.15. The details of the relocation plan, if any is provided by the declarant for assisting tenants in relocating, shall also be provided to the tenant.

E. Any county, city or town may require by ordinance that the declarant of a conversion cooperative file with that governing body all information which is required by the agency pursuant to § 55-498 and a copy of the formal notice required by subsection A. Such information shall be filed with that governing body when the application for registration is filed with the agency, and such copy of the formal notice shall be filed with that governing body whenever it is sent to tenants. No fee shall be imposed for such filings with a governing body.

F. The governing body of any county utilizing the urban county executive form of optional government (§§ 15.2-800 through 15.2-858) or the county manager plan of optional government (§§ 15.2-702 through 15.2-749), or of any city or town adjoining any such county, may require by ordinance that the declarant of any residential cooperative containing conversion buildings converted from multi-family rental use shall reimburse any tenant displaced by the conversion for amounts actually expended to relocate as a result of such dislocation. The reimbursement shall not be required to exceed the amount to which the tenant would have been entitled to receive under §§ 25.1-407 and 25.1-415 if the real estate comprising the condominium had been condemned by the Department of Highways and Transportation.

G. Any county, city or town may require by ordinance that elderly or disabled tenants, occupying as

their residence up to twenty percent of the apartments or units in a cooperative containing conversion buildings at the time of issuance of the general notice required by subsection A hereof, be offered leases or extensions of leases on the apartments or units they occupy or on other apartments or units of at least equal size and overall quality for up to three years beyond the date of such notice.

The terms and conditions thereof shall be as agreed upon by the lessor and the lessee, provided that the rent for such apartment or unit shall not be in excess of reasonable rent for comparable apartments or units in the same market area as such conversion building.

Such leases or extensions shall not be required, however, in the case of any apartments or units which will, in the course of the conversion, be substantially altered in physical layout, restricted exclusively to nonresidential use, or be converted in such a manner as to require relocation of the tenant in premises outside of the project being converted.

H. For the purposes of this section:

"Agency" means the ~~Real Estate~~ *Common Interest Community* Board.

"Elderly" means not less than sixty-two years of age.

"Disabled" means suffering from a severe, chronic physical or mental impairment which results in substantial functional limitations.

I. Nothing in this section permits termination of a lease by a declarant in violation of its terms.

§ 55-496. Administrative agency.

This chapter shall be administered by the ~~Real Estate~~ *Common Interest Community* Board, which herein is called the "agency."

§ 55-504.1. Annual report by associations.

A. The association shall file an annual report in a form and at such time as prescribed by regulations of the agency. The filing of the annual report required by this section shall commence upon the termination of any declarant control period reserved pursuant to § 55-460.

B. The agency may accept copies of forms submitted to other state agencies to satisfy the requirements of this section if such forms contain substantially the same information required by the agency.

C. The annual report shall be accompanied by a fixed fee in an amount established by the agency, *together with an annual assessment in an amount equal to the lessor of \$1,000 (or such other amount as the agency may establish by regulation) or 0.02% of the association's gross assessment during the preceding calendar year. All fees shall be remitted to the State Treasurer and shall be placed to the credit of the Common Interest Community Management Information Fund established pursuant to § 55-529. Following the close of any biennium, nongeneral fund revenues generated by such fees in the past biennium in excess of the expenses allocated to the agency in its account within the Department of Professional and Occupational Regulation in such biennium shall be remitted to the State Treasurer and shall be placed to the credit of the Common Interest Community Management Fund established pursuant to § 55-529.*

§ 55-511. Contract disclosure statement; right of cancellation.

A. Subject to the provisions of subsection F of § 55-512, a person selling a lot shall disclose in the contract that (i) the lot is located within a development which is subject to the Virginia Property Owners' Association Act; (ii) the Act requires the seller to obtain from the property owners' association an association disclosure packet and provide it to the purchaser; (iii) the purchaser may cancel the contract within three days after receiving the association disclosure packet or being notified that the association disclosure packet will not be available; (iv) if the purchaser has received the association disclosure packet, the purchaser has a right to request an update of such disclosure packet in accordance with § 55-512; and (v) the right to receive the association disclosure packet and the right to cancel the contract are waived conclusively if not exercised before settlement.

For purposes of clause (iii), the association disclosure packet shall be deemed not to be available if (i) a current annual report has not been filed by the association with either the State Corporation Commission pursuant to § 13.1-936 or with the ~~Real Estate~~ *Common Interest Community* Board pursuant to § 55-516.1, (ii) the seller has made a written request to the association that the packet be provided and no such packet has been received within 14 days in accordance with subsection E of § 55-512, or (iii) written notice has been provided by the association that a packet is not available.

B. If the contract does not contain the disclosure required by subsection A, the purchaser's sole remedy is to cancel the contract prior to settlement.

C. The information contained in the association disclosure packet shall be current as of a date specified on the association disclosure packet obtained by the seller in accordance with this section. The purchaser may cancel the contract: (i) within three days after the date of the contract, if on or before the date that the purchaser signs the contract, the purchaser receives the association disclosure packet or is notified that the association disclosure packet will not be available; (ii) within three days after receiving the association disclosure packet if the association disclosure packet or notice that the association disclosure packet will not be available is hand delivered or delivered by electronic means and a receipt

obtained; or (iii) within six days after the postmark date if the association disclosure packet or notice that the association disclosure packet will not be available is sent to the purchaser by United States mail. The purchaser may also cancel the contract at any time prior to settlement if the purchaser has not been notified that the association disclosure packet will not be available and the association disclosure packet is not delivered to the purchaser. Notice of cancellation shall be provided to the lot owner or his agent by one of the following methods:

1. Hand delivery;
2. United States mail, postage prepaid, provided the sender retains sufficient proof of mailing, which may be either a United States postal certificate of mailing or a certificate of service prepared by the sender confirming such mailing;

3. Electronic means provided the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery; or

4. Overnight delivery using a commercial service or the United States Postal Service.

In the event of a dispute, the sender shall have the burden to demonstrate delivery of the notice of cancellation. Such cancellation shall be without penalty, and the seller shall cause any deposit to be returned promptly to the purchaser. The association may also send the association disclosure packet by electronic means unless either the seller or the purchaser requests a paper disclosure packet.

D. Whenever any contract is canceled based on a failure to comply with subsection A or C or pursuant to subsection B, any deposit or escrowed funds shall be returned within 30 days of the cancellation, unless the parties to the contract agreed upon a shorter period.

E. Any rights of the purchaser to cancel the contract provided by this chapter are waived conclusively if not exercised prior to settlement.

F. Except as expressly provided in this chapter, the provisions of this section and § 55-512 may not be varied by agreement, and the rights conferred by this section and § 55-512 may not be waived.

§ 55-512. Contents of association disclosure packet; other requirements.

A. Subject to the provisions of subsections C and F, the association shall make available to an owner or his authorized agent within 14 days after receipt of a written request therefor and receipt of the appropriate fee, an association disclosure packet, which, upon receipt, the seller shall deliver to the purchaser. The information contained in the association disclosure packet shall be current as of a date specified on the association disclosure packet. If hand or electronically delivered, the written request and fee are deemed received on the date of delivery. If sent by United States mail, the request and fee are deemed received six days after the postmark date. An association disclosure packet shall contain the following:

1. The name of the association and, if incorporated, the state in which the association is incorporated and the name and address of its registered agent in Virginia;

2. A statement of any expenditure of funds approved by the association or the board of directors which shall require an assessment in addition to the regular assessment during the current year or the immediately succeeding fiscal year;

3. A statement, including the amount of all assessments and any other mandatory fees or charges currently imposed by the association and associated with the purchase, disposition and maintenance of the lot and to the right of use of common areas, and the status of the account;

4. A statement whether there is any other entity or facility to which the lot owner may be liable for fees or other charges;

5. The current reserve study report or summary thereof, a statement of the status and amount of any reserve or replacement fund and any portion of the fund allocated by the board of directors for a specified project;

6. A copy of the association's current budget or a summary thereof prepared by the association, and a copy of its statement of income and expenses or statement of its financial condition for the last fiscal year for which such statement is available, including a statement of the balance due of any outstanding loans of the association;

7. A statement of the nature and status of any pending suit or unpaid judgment to which the association is a party which either could or would have a material impact on the association or its members or which relates to the lot being purchased;

8. A statement setting forth what insurance coverage is provided for all lot owners by the association, including any fidelity bond maintained by the association, and what additional insurance would normally be secured by each individual lot owner;

9. A statement that any improvement or alteration made to the lot, or uses made of the lot or common area assigned thereto by the prior lot owner, are not in violation of any of the instruments referred to in subdivision 12 of this subsection;

10. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to

place a sign on the owner's lot advertising the lot for sale;

11. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to display any flag on the owner's lot including, but not limited to reasonable restrictions as to the size, place and manner of placement or display of such flag and the installation of any flagpole or similar structure necessary to display such flag;

12. A copy of the current declaration, the association's articles of incorporation and bylaws, and any rules and regulations or architectural guidelines adopted by the association;

13. A copy of the notice given to the lot owner by the association of any current or pending rule or architectural violation;

14. A copy of the fully completed one-page cover sheet developed by the Real EstateCommon Interest Community Board pursuant to ~~§ 54.1-2105.1~~ § 54.1-2350; and

15. Certification, if applicable, that the association has filed with the Real EstateCommon Interest Community Board the annual report required by § 55-516.1; which certification shall indicate the filing number assigned by the Real EstateCommon Interest Community Board and the expiration date of such filing.

Failure to receive copies of such documents shall not excuse any failure to comply with the provisions thereof.

The disclosure packet, once received by the seller from the association, shall be delivered by the seller to the purchaser. The association shall have no obligation to deliver the disclosure packet to the purchaser of the lot. The disclosure packet required by this section, shall not, in and of itself, be deemed a security within the meaning of § 13.1-501.

B. The purchaser may submit a copy of the contract to the association with a request for assurance that the information required by this section previously furnished remains materially unchanged, or, if there have been material changes, a statement specifying such changes. The purchaser shall be provided with such assurances or such statement within 10 days of the receipt of such request by the association. The purchaser may be required to pay a fee for the preparation and issuance of the requested assurances. The fee shall reflect the actual cost incurred by the association in providing such assurances but shall not exceed \$0.10 per page of copying costs or a total of \$50 for all costs incurred in updating the association disclosure packet. The association may also collect from the purchaser the actual costs incurred of any mailing or delivery requested by the purchaser pursuant to this subsection. In no event, however, shall the association require reimbursement of any costs not expressly authorized in this subsection. Nor shall the association charge any other fee for the preparation or issuance of such association disclosure packet or making such packet available by electronic means except as expressly provided in this subsection.

C. The association may charge a fee for the preparation and issuance of the disclosure packet required by this section. Any fee shall reflect the actual cost of the preparation of the packet, but shall not exceed \$0.10 per page of copying costs or a total of \$100 for all costs incurred in preparing the association disclosure packet. However, the association may:

1. Upon mutual agreement with the seller, collect for actual costs incurred, in addition to any fee charged pursuant to this subsection:

a. A rush fee, not to exceed \$25, for furnishing the disclosure packet within three business days from the actual receipt of the request;

b. The actual cost of any mailing or delivery requested by the seller pursuant to this subsection; and

c. Any actual cost incurred at the request and with the consent of the purchaser; and

2. Collect a reasonable fee for preparing the association disclosure packet, not to exceed \$325, if the amount of the fee (i) reflects actual cost, (ii) is established in the contract between the association and any ~~managing agent~~ common interest community manager, and (iii) is disclosed on the association's website or the website of its ~~managing agent~~ common interest community manager.

Neither the association nor its ~~management agent~~ common interest community manager, if any, shall require cash or certified funds unless the lot owner is delinquent in any payments due to the association in excess of 30 days or if a check of the lot owner made payable to the association was returned for insufficient funds within the last six months. In no event, however, shall the association require reimbursement of any costs not expressly authorized in this subsection. Nor shall the association charge any other fee for the preparation or issuance of such association disclosure packet or making such packet available by electronic means except as expressly provided in this subsection.

Any association authorized to charge a fee for the furnishing of a disclosure packet pursuant to this subsection shall promptly pay the fee to the ~~managing agent~~ common interest community manager where the ~~managing agent~~ common interest community manager furnishes the association disclosure packet and shall assess the fee against the lot owner for which the disclosure packet was prepared. The fee shall be treated as an assessment against the member's lot for the purposes of § 55-516. The purchaser shall not be responsible for payment of the fee. The maximum allowable amount of such fee shall adjust annually based on the annual increases in the United States Average Consumer Price Index for all items, all

urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U. S. Department of Labor.

D. When a disclosure packet has been issued as required by this section, the association shall, as to the purchaser, be bound by the statements set forth therein as to the status of the assessment account and the status of the lot with respect to any violation of any of the instruments referred to in subdivision 12 of subsection A as of the date of the statement unless the purchaser had actual knowledge that the contents of the disclosure packet were in error.

E. If the association has been requested to furnish the disclosure packet required by this section and has been paid the appropriate fee, its failure to provide the disclosure packet in substantially the form provided herein within 14 days from the actual receipt of the request by an officer, director or agent of the association shall be deemed a waiver of any claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, or architectural guidelines existing as of the date of the request with respect to the subject lot. The association shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed \$500. The purchaser shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all matters arising after the date of the settlement of the sale. The settlement agent, as defined in § 6.1-2.20, when transmitting funds to the association or otherwise upon request, shall provide the association with (i) the name of the seller, (ii) the name and address of the purchaser, (iii) the address of the subject property, (iv) the date of settlement, and (v) a brief explanation of the application of any funds transmitted. Providing a copy of the HUD-1 settlement statement, unless otherwise prohibited, shall satisfy these requirements.

F. The contract disclosures required by § 55-511 and the disclosure packet required by this section need not be provided in the case of:

1. A disposition of a lot by gift;
2. A disposition of a lot pursuant to court order if the court so directs;
3. A disposition of a lot by foreclosure or deed in lieu of foreclosure;
4. A disposition of a lot that is zoned for or otherwise restricted to nonresidential use; or
5. A disposition of a lot to a person or entity who is not acquiring the lot for his own residence or for the construction thereon of a dwelling unit to be occupied as his own residence, unless requested by such person or entity. If such disclosures are not requested, a statement in the contract of sale that the purchaser is not acquiring the lot for such purpose shall be conclusive and may be relied upon by the seller of the lot. The person or entity acquiring the lot shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all matters.

G. In any transaction in which a disclosure packet is required and a trustee acts as the seller in the sale or resale of a lot, the trustee shall obtain the disclosure packet from the association and provide the packet to the purchaser.

§ 55-514.2. Deposit of funds; fidelity bond.

A. All funds deposited with a managing agent shall be handled in a fiduciary capacity and shall be kept in a fiduciary trust account in a federally insured financial institution separate from other assets of the managing agent. The funds shall be the property of the association and shall be segregated for each account in the records of the managing agent in a manner that permits the funds to be identified on an individual association basis.

B. Any association collecting assessments for common expenses shall obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy ~~covering~~ *insuring the association against losses resulting from theft or dishonesty committed by the officers, directors, and or persons employed by the association, and/or committed by any managing agent and/or employees of the managing agent.* Such bond or insurance policy shall provide a ~~minimum of \$10,000 in~~ *coverage in an amount equal to the lessor of \$1 million or the amount of the reserve balances of the association and three times the monthly assessments of such association. The minimum coverage amount shall be \$10,000.* The board of directors or managing agent may obtain such bond or insurance on behalf of the association.

§ 55-516.1. Annual report by association.

A. The association shall file an annual report in a form and at such time as prescribed by regulations of the ~~Real Estate Common Interest Community Board.~~

B. The ~~Real Estate Common Interest Community Board~~ may accept copies of forms submitted to other state agencies to satisfy the requirements of this section if such forms contain substantially the same information required by the ~~Real Estate Common Interest Community Board.~~

C. The annual report shall be accompanied by a fixed fee in an amount established by the ~~Real Estate Common Interest Community Board,~~ *together with an annual assessment in an amount equal to the lessor of \$1,000 (or such other amount as the Board may establish by regulation) or 0.02% of the association's gross assessment income during the preceding calendar year. All fees shall be remitted to*

1781 the State Treasurer and shall be placed to the credit of the Common Interest Community Management
 1782 Information Fund established pursuant to ~~§ 55-529~~ Following the close of any biennium, nongeneral
 1783 fund revenues generated by such fees in the past biennium in excess of the expenses allocated to the
 1784 Board in its account within the Department of Professional and Occupational Regulation in such
 1785 biennium shall be remitted to the State Treasurer and shall be placed to the credit of the Common
 1786 Interest Community Management Fund established pursuant to § 55-529.

1787 § 55-528. Definitions.

1788 As used in this chapter, unless the context requires a different meaning:

1789 "Association" includes condominium, cooperative, or property owners' associations.

1790 "Balance of the Fund" means cash, securities that are legal investments for fiduciaries under the
 1791 provisions of subdivisions (1), (2), and (4) of § 26-40, and repurchase agreements secured by
 1792 obligations of the United States government or any agency thereof, and shall not mean accounts
 1793 receivable, judgments, notes, accrued interest, or other obligations to the fund.

1794 "Board" means the ~~Real Estate~~ Common Interest Community Board.

1795 "Claimant" means upon proper application to the Director, a receiver for a common interest
 1796 community manager appointed pursuant to § 54.1-2354 in those cases in which there are not sufficient
 1797 funds to restore all funds that were or ought to have been held in a fiduciary capacity by the subject
 1798 common interest community manager or to pay an award of reasonable fees, costs, and expenses to the
 1799 receiver.

1800 "Common interest community" means real estate located within the Commonwealth subject to a
 1801 declaration which contains lots, at least some of which are residential or occupied for recreational
 1802 purposes, and common areas to which a person, by virtue of his ownership of a lot, is a member of an
 1803 association and is obligated to pay assessments provided for in a declaration.

1804 "Declaration" means any instrument, however denominated, recorded among the land records of the
 1805 county or city in which the development or any part thereof is located, that either (i) imposes on the
 1806 association maintenance or operational responsibilities for the common area as a regular annual
 1807 assessment or (ii) creates the authority in the association to impose on lots, or on the owners or
 1808 occupants of such lots, or on any other entity any mandatory payment of money as a regular annual
 1809 assessment in connection with the provision of maintenance or services or both for the benefit of some
 1810 or all of the lots, the owners or occupants of the lots, or the common area. "Declaration" includes any
 1811 amendment or supplement to the instruments described in this definition.

1812 "Director" means the Director of the Department of Professional and Occupational Regulation.

1813 "Governing Board" means the governing board of an association, including the executive organ of a
 1814 condominium unit owner's association, the executive board of a cooperative proprietary lessees'
 1815 association, and the board of directors of a property owners' association.

1816 "Lot" means (i) any plot or parcel of land designated for separate ownership or occupancy shown on
 1817 a recorded subdivision plat for a development or the boundaries of which are described in the
 1818 declaration or in a recorded instrument referred to or expressly contemplated by the declaration, other
 1819 than a common area, and (ii) a unit in a condominium association or a unit in a real estate cooperative.

1820 § 55-529. Common Interest Community Management Information Fund.

1821 There is hereby created the Common Interest Community Management Information Fund to be used
 1822 in the discretion of the Board to promote the improvement and more efficient operation of common
 1823 interest communities through research and education. The Fund shall consist of money paid into it
 1824 pursuant to §§ 54.1-2349, 55-79.93:1, 55-504.1, and 55-516.1. The Fund shall be established on the
 1825 books of the Comptroller, and any funds remaining in such Fund at the end of the biennium shall not
 1826 revert to the general fund but shall remain in the Fund, at the discretion of the Board, shall remain in
 1827 the Fund or shall be transferred to the Common Interest Community Management Recovery Fund
 1828 established pursuant to § 55-530.1. Interest earned on the Fund shall be credited to the Fund.

1829 § 55-530. Powers of the Board; Common interest community ombudsman; complaints.

1830 A. The Board shall administer the provisions of this chapter pursuant to the powers conferred by
 1831 § 54.1-2105.1, § 54.1-2350, and this chapter.

1832 B. A community association liaison shall be appointed in accordance with ~~§ 54.1-303~~ who shall
 1833 administer the requirements of this chapter and serve as an information resource on issues relating to the
 1834 governance, administration and operation of common interest communities, including the laws and
 1835 regulations relating thereto. Such information may include nonbinding interpretations of laws or
 1836 regulations governing common interest communities and referrals to public and private agencies offering
 1837 alternative dispute resolution services, with a goal of reducing and resolving conflicts among
 1838 associations and their members. The compensation for the community association liaison designated
 1839 pursuant to this chapter shall be paid from the Fund; provided that no more than sixty percent of the
 1840 moneys collected annually in the Fund shall be used for such purpose.

1841 C. The Board shall use at least forty percent of the moneys collected annually in the Fund created by
 1842 this chapter for financing or promoting the following:

1. Information and research in the field of common interest community management and operation;
 2. Expeditious and inexpensive procedures for resolving common interest community disputes;
 3. Seminars and educational programs designed to address topics of concern to community associations; and

4. Other programs deemed necessary and proper to accomplish the purpose of this chapter.

D. The Board shall establish accounting procedures whereby forty percent of the net revenues collected in any fiscal year shall be expended in accordance with subsection C in the calendar year that begins during that fiscal year.

The Director in accordance with § 54.1-303 shall appoint a Common Interest Community Ombudsman and shall establish the Office of the Common Interest Community Ombudsman. The Common Interest Community Ombudsman shall be a member in good standing in the Virginia State Bar. The Office of the Common Interest Community Ombudsman shall promote and protect the interests of the members of associations. All state agencies shall assist and cooperate with the Office of the Common Interest Community Ombudsman in the performance of its duties under this chapter. The expenses for the operations of the Office of the Common Interest Community Ombudsman, including the compensation paid to the Common Interest Community Ombudsman, shall be paid first from interest earned on deposits constituting the fund and the balance from the moneys collected annually in the fund.

C. The Office of the Common Interest Community Ombudsman shall:

1. Assist members in understanding their rights and the processes available to them according to the declaration and bylaws of the association.

2. Answer inquiries from members and other citizens by telephone, mail, electronic mail, and in person.

3. Provide to members and other citizens information concerning common interest communities upon request.

4. Make available, either separately or through an existing internet website utilized by the Director, information as set forth in subdivisions 3 and such additional information as may be deemed appropriate.

5. Receive the notices of complaint filed.

6. In conjunction with complaint and inquiry data maintained by the Director, maintain data on inquiries received, the types of assistance requested, notices of complaint received, any actions taken, and the disposition of each such matter.

7. Upon request, assist members in using the procedures and processes available to them in the association, including nonbinding explanations of laws or regulations governing common interest communities or interpretations thereof by the Board, and referrals to public and private agencies offering alternative dispute resolution services, with a goal of reducing and resolving conflicts among associations and their members. Such assistance may require the review of the declaration and other records of an association. An association shall provide such information to the Office of the Common Interest Community Ombudsman within a reasonable time upon request.

8. Ensure that members have access to the services provided through the Office of the Common Interest Community Ombudsman and that the members receive timely responses from the representatives of the Office of the Common Interest Community Ombudsman to the inquiries.

9. Upon request to the Director by any of the standing committees of the General Assembly having jurisdiction over common interest community or by the Housing Commission, provide to the Director for dissemination to the requesting parties assessments of proposed and existing common interest community laws and other studies of common interest community issues.

10. Monitor changes in federal and state laws relating to common interest communities.

11. Provide information to the Director that will permit the Director to report annually on the activities of the Office of the Common Interest Community Ombudsman to the standing committees of the General Assembly having jurisdiction over common interest communities and to the Housing Commission. The Director's report shall be filed by December 1 of each year, and shall include a summary of significant new developments in federal and state laws relating to common interest communities each year.

12. Carry out activities as the Board determines to be appropriate.

D. The Board may use the remainder of the interest earned on the balance of the fund and of the moneys collected annually and deposited in the fund for financing or promoting the following:

1. Information and research in the field of common interest community management and operation;

2. Expeditious and inexpensive procedures for resolving common interest community disputes;

3. Seminars and educational programs designed to address topics of concern to community associations; and

4. Other programs deemed necessary and proper to accomplish the purpose of this chapter.

E. The Board shall establish by regulation a requirement that each association shall establish reasonable procedures for the resolution of written complaints from the members of the association and other citizens which system shall include the following:

1. A record of each complaint shall be maintained for no less than one year after the association acts upon the complaint.

2. Such association shall provide complaint forms and/or written procedures to be given to persons who wish to register written complaints. Such forms or procedures shall include the address and telephone number of the association or its common interest community manager to which complaints shall be directed and the mailing address, telephone number, and electronic mail address of the Office of the Common Interest Community Ombudsman. Such forms and written procedures shall include a clear and understandable description of the complainant's right to give notice of adverse decisions pursuant to this section.

F. A complainant may give notice to the Board of any final adverse decision in accordance with regulations promulgated by the Board. The notice shall be filed within 30 days of the final adverse decision, shall be in writing on forms prescribed by the Board, shall include copies of all records pertinent to the decision, and shall be accompanied by a \$25 filing fee. The fee shall be collected by the Director and paid directly into the state treasury and credited to the Common Interest Community Management Information Fund, §55-530.1. The Board may, for good cause shown, waive or refund the filing fee upon a finding that payment of the filing fee will cause undue financial hardship for the member. The Director shall provide a copy of the written notice to the association which made the final adverse decision.

G. The Director or his designee, may request additional information concerning any notice of complaint from the association which made the final adverse decision. The association shall provide such information to the Director within a reasonable time upon request. If the Director upon review determines that the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the Board, the Director may, in his sole discretion, provide the complainant and the association with information concerning such laws or regulations governing common interest communities or interpretations thereof by the Board. The determination whether the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the Board is a matter within the sole discretion of the Director, whose decision is final and not subject to further review. Such determination shall not bind the complainant or the association which made the final adverse decision.

H. The Board shall issue a certificate of filing to each association which has properly filed in accordance with this title. The certificate shall include the date of registration and a unique registration number assigned by the Board.

I. The Board may prescribe regulations which shall be adopted, amended or repealed in accordance with the Administrative Process Act (2.2-4000 et seq.) to accomplish the purpose of this chapter.

§ 55-530.1. Common Interest Community Management Recovery Fund.

A. There is hereby created the Common Interest Community Management Recovery Fund (the Fund) to be used in the discretion of the Board to protect the interests of associations.

B. Each common interest community manager, at the time of initial application for licensure, and each association filing its first annual report after the effective date hereof shall be assessed \$25, which shall be specifically assigned to the Fund. Initial payments may be incorporated in any application fee payment or annual filing fee and transferred to the Fund by the Director within 30 days.

All assessments, except initial assessments, for the Fund shall be deposited within three work days after their receipt by the Director, in one or more federally insured banks, savings and loan associations, or savings banks located in the Commonwealth. Funds deposited in banks, savings institutions, or savings banks, to the extent in excess of insurance afforded by the Federal Deposit Insurance Corporation or other federal insurance agency, shall be secured under the Security for Public Deposits Act (§ 2.2-4400 et seq.). The deposit of these funds in federally insured banks, savings and loan associations, or savings banks located in the Commonwealth shall not be considered investment of such funds for purposes of this section. Funds maintained by the Director may be invested in securities that are legal investments for fiduciaries under the provisions of § 26-40.01.

Interest earned on the deposits constituting the Fund shall be used for administering the Fund. The remainder of this interest, at the discretion of the Board, may be transferred to Common Interest Community Management Information Fund or accrue to the Fund.

C. On and after July 1, 2011, the minimum balance of the Fund shall be \$150,000. Whenever the Director determines that the balance of the Fund is or will be less than such minimum balance, the Director shall immediately inform the Board. At the same time, the Director may recommend that the Board transfer a fixed amount from the Common Interest Community Management Information Fund to the Fund to bring the balance of the Fund to the amount required by this subsection. Such transfer shall be considered by the Board within 30 days of the notification of the Director.

D. If any such transfer of funds is insufficient to bring the balance of the Fund to the minimum amount required by this section, or if a transfer to the fund has not occurred, the Board shall assess each association and each common interest community manager within 30 days of notification by the Director, a sum sufficient to bring the balance of the Fund to the required minimum amount. The amount of such assessment shall be allocated among the associations and common interest community managers in proportion to the each payor's most recently paid annual assessment, or if an association or common interest community manager has not paid an annual assessment previously, in proportion to the average annual assessment most recently paid by associations or common interest community managers respectively. The Board may order an assessment at any time in addition to any required assessment. Assessments made pursuant to this subsection may be issued by the Board (i) after a determination made by it or (ii) at the time of license renewal.

Notice to common interest community managers and the governing boards of associations of these assessments shall be by first-class mail, and payment of such assessments shall be made by first-class mail addressed to the Director within 45 days after the mailing of such notice.

E. If any common interest community manager fails to remit the required payment within forty-five days of the mailing, the Director shall notify the common interest community manager by first-class mail at the latest address of record filed with the Board. If no payment has been received by the Director within 30 days after mailing the second notice, the license shall be automatically suspended. The license shall be restored only upon the actual receipt by the Director of the delinquent assessment.

F. If any association fails to remit the required payment within 45 days of the mailing, the Director shall notify the association by first-class mail at the latest address of record filed with the Board. If no payment has been received by the Director within 30 days after mailing the second notice, it shall be deemed a knowing and willful violation of this section by the governing board of the association.

G. At the close of each fiscal year, whenever the balance of the fund exceeds \$2 million, the amount in excess of \$2 million shall be transferred to the Virginia Housing Partnership Revolving Fund, §36-137. Except for payments of costs as set forth in this chapter and transfers pursuant to this subsection, there shall be no transfers out of the fund, including transfers to the general fund, regardless of the balance of the fund.

H. A claimant may seek recovery from the fund subject to the following conditions:

1. A claimant may file a verified claim in writing to the Director for a recovery from the Fund.

2. Upon proper application to the Director, in those cases in which there are not sufficient funds to pay an award of reasonable fees, costs, and expenses to the receiver or to restore all funds that were or ought to have been held in a fiduciary capacity by the subject common interest community manager, the Director shall report to the Board the amount of any shortfall to the extent that there are not sufficient funds (i) to pay any award of fees, costs, and expenses pursuant to subsection G of § 54.1-2354 by the court appointing the receiver; or (ii) to restore all funds that were or ought to have been held in a fiduciary capacity by the subject common interest community manager, as certified by the court appointing the receiver.

3. If the Board finds there has been compliance with the required conditions, the Board shall issue a directive ordering payment of the amount of such shortfall to the claimant from the fund; provided that in no event shall such payment exceed the balance in the fund. When the fund balance is not sufficient to pay the aggregate amount of such shortfall, the Board shall direct payment shall be applied first in satisfaction of any award of reasonable fees, costs, and expenses to the receiver and second to restore the funds that were or ought to have been held in a fiduciary capacity by the subject common interest community manager. If the Board has reason to believe that there may be additional claims against the fund, the Board may withhold any payment(s) from the fund for a period of not more than one year. After such one-year period, if the aggregate of claims received exceeds the fund balance, the fund balance shall be prorated by the Board among the claimants and paid in the above payment order from the fund in proportion to the amounts of remaining unpaid.

4. The Director shall, subject to the limitations set forth in this subsection, pay to the claimant from the fund such amount as shall be directed by the Board upon the execution and delivery to the Director by such claimant of an assignment to the Board of the claimant's rights on its behalf and on behalf of the associations receiving distributions from the fund against the common interest community manager to the extent that such rights were satisfied from the fund.

5. The claimant shall be notified in writing of the findings of the Board. The Board's findings shall be considered a "case decision" and judicial review of these findings shall be in accordance with § 2.2-4025 of the Administrative Process Act (§ 2.2-4000 et seq.).

6. Notwithstanding any other provision of law, the Board shall have the right to appeal a decision of any court which is contrary to any distribution recommended or authorized by it.

7. Upon payment by the Director to a claimant from the fund as provided in this subsection, the Board shall immediately revoke the license of the common interest community manager whose actions

2027 resulted in payment from the fund. The common interest community manager whose license was so
2028 revoked shall not be eligible to apply for a license as a common interest community manager until he
2029 has repaid in full the amount paid from the fund on his account, plus interest at the judgment rate of
2030 interest from the date of payment from the fund.
2031 8. Nothing contained in this subsection shall limit the authority of the Board to take disciplinary
2032 action against any common interest community manager for any violation of statute or regulation, nor
2033 shall the repayment in full by a common interest community manager of the amount paid from the fund
2034 on such common interest community manager's account nullify or modify the effect of any disciplinary
2035 proceeding against such common interest community manager for any such violation.